



Governor's Office of Storm Recovery

REBUILD BY DESIGN LIVING BREAKWATERS POLICY AND PROCEDURE MANUAL

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The policies and procedures stated in this manual are current as of April, 22 2021. This manual represents the current version of the Governor's Office of Storm Recovery's (GOSR) policy and procedure which shall provide general guidance for the operation of the Rebuild by Design (RBD) projects. All procedure manuals will be reviewed periodically and will be updated. GOSR will use its best efforts to keep all of its Policy and Procedure Manuals current. Therefore, you are strongly urged to visit our website www.stormrecovery.ny.gov or to contact the info@stormrecovery.ny.gov to ensure that you have the latest version of GOSR's policies. There may be times, however, when a policy will change before the manual can be revised.

POLICY AND PROCEDURE MANUAL

Rebuild by Design

Version Control

Version Number	Date Revised	Description of Revisions
1.0	July 11, 2018*	RBD Projects moved to the CR Program – RBD policies and procedures refined.
2.0	December 16, 2020	Substantial revisions of the entire manual to remove Living with the Bay to be documented in a separate Policy Manual.
3.0	April 22, 2021	Revisions throughout Manual for accuracy and clarity, including updates to sections 1.0 Introduction; 2.0 Summary of Rebuild by Design Living Breakwaters; 3.0 HUD CDBG-DR Requirements; 4.0 Rebuild by Design Policies; 5.0 Rebuild by Design Procedures; and Exhibit 1 Program Administrative Requirements and Cross-Cutting Federal Regulations.

*Prior to this update the RBD projects followed the policies and procedures of the NY Rising Infrastructure Program or NY Rising Community Reconstruction Program, as appropriate.

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1.0 Introduction

In response to the damage caused by Superstorm Sandy and other natural disasters that occurred across the nation in 2011, 2012, and 2013, the U.S. Congress appropriated \$16 billion in federal funds for the Community Development Block Grant-Disaster Recovery (CDBG-DR) program through Public Law 113-2. Enacted on January 29, 2013, this law stipulates that these funds are to be used for the following recovery efforts:

“...necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): Provided, that funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development...”

Following Superstorm Sandy, the State of New York developed and implemented several disaster recovery initiatives as outlined in the [State of New York Action Plan for Community Development Block Grant Program Disaster Recovery](#) (Action Plan) and subsequent amendments.

In the aftermath of the storm, President Obama created the Superstorm Sandy Rebuilding Task Force with the purpose of assessing how the nation could redesign the approach to recovery and rebuilding following major disasters. In August of 2013, the Task Force issued its report entitled [The Sandy Rebuilding Strategy: Stronger Communities, Resilient Region](#). A recommendation made by the Task Force was to increase regional collaboration and emphasize the growing risks of climate change. To address this finding the Task Force partnered with HUD to initiate the Rebuild by Design (RBD) competition, which invited the world’s most talented designers and engineers to bring their expertise in flood mitigation and coastal resiliency to Sandy impacted regions. RBD challenged them to develop projects that would address the needs of Sandy’s impacted communities while also making them more resilient to climate change through the use of natural and man-made design concepts.

The RBD process used a combination of bottom-up community participation, with forward-minded designers, and State provided technical expertise. The approach engaged community members to assess the needs and opportunities of where they live and work, and provided them with informed rigorous analysis and the latest innovative solutions. The goal of this process was to build community support for projects that could empower the State’s Sandy-impacted communities with the technical expertise needed to develop thorough and implementable projects that were physically, socially, and economically resilient and sustainable. The seven RBD competition finalists were announced on June 2, 2014. Four of the seven final projects were located in New York State. In partnership with the winning firms, GOSR is working to implement two of these groundbreaking projects.

In the October 16, 2014 Federal Register Notice (FR-5696-N-11), HUD announced the funding of the winning RBD proposals. No RBD project was fully funded. The State of New York was awarded \$185 million dollars in CDBG-DR funding to implement two of the projects:

1. Rebuild by Design: Living Breakwaters, Staten Island, New York (\$60 million CDBG-DR)
2. Rebuild by Design: Living with the Bay (LWTB), Nassau County, New York (\$125 million CDBG-DR).

The goals of the RBD projects are to fulfill the mission of the RBD Design Competition and implement the funded projects. HUD's intent for both RBD projects was, through robust outreach, to construct innovative, flexible, and scalable resiliency interventions that could serve as a disaster mitigation model that could possibly be replicated in the State, nationally, or internationally. Each project follows HUD CDBG-DR guidelines and regulations and undergoes rigorous environmental review and permitting processes, which include the assessment of potential alternative designs and/or projects. GOSR works with subrecipients for some portions of the implementation as set out in Section 4 and 5 of this manual.

Information regarding these two projects can be found in the State's Action Plan on GOSR's website.

1.1 Oversight of Storm Recovery

Governor Andrew Cuomo established the Governor's Office of Storm Recovery (GOSR), a division of the New York State Housing Trust Fund Corporation (HTFC) in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. HTFC is a component of New York State Homes and Community Renewal (HCR), a unified leadership platform, encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal. GOSR was formed to direct the administration of the federal CDBG-DR funds. GOSR works in close collaboration with local leaders to respond to communities' most urgent storm recovery needs, while also identifying long-term and innovative solutions to strengthen the State's infrastructure and critical systems.

1.2 Manual Overview

This manual outlines the policies and procedures that GOSR has developed for implementation and oversight of the RBD Living Breakwaters project. This manual expands upon the information outlined in the State's Action Plan and subsequent amendments and details the planning, design, and implementation phases of the RBD projects. The manual applies specifically to the project activities involving the NYS RBD Living Breakwaters Project that was deemed eligible for CDBG-DR funding either through State implementation or through subrecipient provided funding to implement the project. This RBD Manual and manuals for other programs are available for public review and use at <http://www.stormrecovery.ny.gov>.

1.3 Fulfilling the Principles Established by State's Action Plan

The RBD projects are expected to make communities more resilient and encourage investment in areas that were awarded RBD funding by revitalizing storm-impacted regions and ensuring that communities are not just rebuilt, but also become safer and more resilient—especially for those

areas where there is a high risk of future flooding. RBD projects aim to restore the vibrancy of New York State's disaster-impacted communities and enhance the quality of life for its residents.

The State's recovery programs, including the RBD projects, and the other activities outlined in the Action Plan, are based on six key principles below:

1. ***Building back, better, and smarter*** – As New Yorkers work to repair the severe damage caused by Superstorm Sandy and other storm events, the State uses the recovery programs as an opportunity to ensure that damaged infrastructure, natural resources and buildings are not simply restored to their pre-storm condition or replaced with the same kind of structures. Instead, New York State invests in additional mitigation measures to prevent similar damage from occurring in the future. The RBD projects incorporate innovative solutions for how communities can rebuild and adapt in response to future risks presented by natural hazards and climate change.
2. ***State-led, community-driven recovery*** – New York State is collaborating closely with local governments, residents and other community based organizations to ensure a coordinated and holistic response, while looking to individual communities to develop forward-looking local recovery plans that meet their specific needs.
3. ***Recovery from Irene, Lee and Sandy*** – The RBD projects will enhance and extend recovery efforts to communities with significant food risks.
4. ***Leveraging funds*** – The RBD projects will seek to leverage private and public funds.
5. ***Spending accountability and transparency*** – New York State implements rigorous controls and oversight to ensure funds are spent responsibly and in compliance with federal and State guidelines.
6. ***Urgency in action*** – Recovery is a long-term endeavor, but people need immediate help. The projects and programs presented in the Action Plan are shaped to achieve the fastest delivery and best support possible, while working within the parameters of the HUD guidelines.

1.4 Citizen Participation Plan

The New York State Citizen Participation Plan (CPP) provides New York citizens an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR recovery program. The Plan sets forth policies and procedures for citizen participation, in accordance with federal regulations, which are designed to maximize the opportunity for citizen involvement in the community development process. The State has attempted to provide all citizens with the opportunity to participate, with emphasis on low and moderate income individuals, individuals with limited English proficiency, and individuals requiring special accommodations due to disabilities. The State's Citizen Participation Plan ensures that there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR grant funds.

In following HUD's guidance in the November 2013 Federal Register, substantial Action Plan Amendments include a 30-day public period with at least one public hearing. The State has, and will continue to, coordinate technical and programmatic outreach meetings with State entities, local governments, non-profits, private sector, and involved associations. The State invites public comments to the Action Plan and Substantial Amendments as required by HUD. These documents are posted prominently and can be accessed on GOSR's official website. The State uses means

such as press releases, posting notices on the New York State Governor's website and/or GOSR's website, to maximize access of program information to the impacted citizens and businesses. The NY Citizen Participation Plan for CDBG-DR Sandy, Irene, and Lee recovery is attached as Exhibit 1 to this Manual.

Per the October 16, 2014 Federal Register Notice (FR-5696-N-11), substantial Action Plan Amendments for RBD projects include a 30-day public comment period with at least one public hearing. The State has, and will continue to, coordinate outreach meetings with State entities, local governments, community based organizations and private sector partners. The State invites public comments to the Action Plan and Substantial Amendments as required by HUD. These documents are posted prominently and can be accessed on GOSR's official website. The State uses means such as press releases, and posting notices on the New York State Governor's website and/or GOSR's website, to maximize access to program information to the impacted citizens and businesses. The NY Citizen Participation Plan for CDBG-DR Sandy, Irene, and Lee recovery is attached as Exhibit 1 to this Manual. The RBD projects follow the NY Citizen Participation Plan, in addition to the RBD specific components described below in sections 1.4.1.1 -1.4.1.5.

1.4.1 Citizen Participation for Rebuild by Design

Public participation was instrumental in the development of each RBD project, as evidenced by the high level of community engagement undertaken by both design teams. The RBD specific components advance policies and procedures that will engage a large and diverse group of stakeholders. A primary outreach strategy being used to implement RBD projects is the formation of a Citizen's Advisory Committee (CAC) for each RBD project, discussed below. Opportunities for public input will ensure that the public has the ability to learn about the projects and also submit comments and concerns that will inform the assessment of potential environmental impacts and project alternatives. The RBD citizen participation activities supplement the State's CPP with RBD specific policies and procedures describing CACs, outreach to vulnerable populations, and public engagement during the project scoping, environmental review, design, and construction phases.

The CPP reflects requirements specified by HUD in the Federal Register (FR-5696-N-11).

The State will ensure that any Units of General Local Government or subrecipients receiving funds for RBD projects will have a citizen participation plan that meets the HUD CDBG-DR regulations and any other citizen participation requirements.

1.4.1.1 Public Outreach for Rebuild by Design

To keep the public informed and engaged throughout the RBD project scoping, environmental review, design and construction phases, the State will undertake extensive public outreach. As noted above, each RBD project has a unique CAC that will complement the State's outreach and allow citizens and interested parties to stay abreast of RBD activities through regularly scheduled public forums. In addition to meeting notices and documents being provided in advance of meetings, locations will be held in close proximity to the RBD sites and when practical will move to differing locations along the RBD site so that greater public involvement is possible.

GOSR's website includes project pages dedicated to both of the State's RBD projects. Each RBD project page contains project status updates, meeting schedules and relevant documents. Outreach may also occur through in-person meetings, solicitation of verbal and written comments, outreach events, and online and traditional media.

1.4.1.2 Outreach to Vulnerable Populations for Rebuild by Design

As required by the New York State Citizen Participation Plan, the State will undertake specific measures to provide all citizens with the opportunity to participate, with an emphasis on Low- and Moderate- Income (LMI) individuals, individuals with limited English proficiency, and individuals requiring special accommodations due to disabilities. To do this, key meetings throughout the project's development will be advertised in various languages, and translators, as well as sign language interpreters, will be present as needed. Notice of meetings will be posted in common areas of public housing and public buildings near the project site. Meetings will be held in handicap accessible locations, and in locations served by public transportation.. Materials presented at meetings will be posted online for public viewing in a timely manner. To further ensure that RBD information is accessible to all residents, significant updates and/or status reports will be available in Spanish, Russian and Chinese, in accordance with GOSR's CPP.

1.4.1.3 Citizens' Advisory Committee (CAC) for Rebuild by Design

GOSR established two CACs to guide the implementation of the State's two RBD projects. The purpose of each CAC is to advise GOSR's RBD project teams on project design and implementation on behalf of the diverse local and regional project stakeholders.

The committee will have an advisory role, which will complement, but not replace, additional project-specific public engagement efforts and events. In addition to the CAC's advisory role, this committee may promote public awareness and understanding of the project to a broad audience. The CAC is expected to advise the State through construction closeout and may play a role in monitoring the long-term effectiveness of the project. CAC members may include leaders in civic associations, business groups, and non-profits, and representatives of vulnerable populations. Committee membership is an unpaid position.

All CAC meetings will be open to the public and there will be time allotted at the end of each meeting for informal public comment and Q&A. Meeting announcements and summaries will be posted on the respective RBD's project webpage on GOSR's website.

CAC Size

Each CAC is composed of no more than 25 qualified members and is led by two (2) co-chairs, selected by the GOSR CAC Review Panel. (See Section 1.4.1.3).

CAC Selection Process

GOSR encourages individuals from all cultural and socioeconomic backgrounds to apply to serve on a CAC in order to create a committee that reflects the diverse communities across each RBD project area. The GOSR CAC Review Panel evaluates all applications to determine which candidates best represent the project and community and meet the diversity goals stated above. All

members represent themselves as a resident or individual professional, not as a representative of an organization, public office or agency, or interest group. Publicly elected officials are eligible to serve on the CAC as a private citizen. However, elected officials are prohibited from using their public office as a position of influence. Additionally, publicly elected officials are encouraged to attend CAC meetings, all of which are open to the public. Those who work for or represent elected officials may apply as ordinary citizens, but not as representing their official position with the elected office.

Application Process

The application period will remain open for 60-days, during which time all interested individuals can submit online or paper applications to serve on each CAC. At the close of the initial application period, GOSR reviews all applications received by the closing date and selects CAC members. If the initial application period did not identify an adequate number of qualified candidates, GOSR reserves the right to publicly re-open the application process and initiate a rolling 60-day application process to identify additional candidates with the goal of creating a robust, well-rounded committee. As members exit the committee through the life of each RBD project, GOSR may replace CAC members through a similar application process.

Application Submission

A. Online Submission

Potential members can submit an on-line application at: <https://stormrecovery.ny.gov/content/citizens-advisory-committee-application>.

B. Paper Submission

Paper applications in multiple language formats are available at the following locations:

For both RBD CACs - Governor's Office of Storm Recovery (GOSR) headquarters

25 Beaver St., 5th Floor Reception,
New York, NY 10004

RBD – Living Breakwaters CAC

Tottenville Public Library
7430 Amboy Rd, Staten Island, NY 10307

RBD – Living with the Bay CAC – GOSR Farmingdale office

500 Bi-County Boulevard, Suite 300
Farmingdale

NY

11735

Paper submissions should be mailed to the following address:

Governor's Office of Storm Recovery (GOSR)
Rebuild By Design – Citizens' Advisory Committee Application
25 Beaver Street 5th Floor
New York, New York 10004

Application Due Dates

Initial applications for the Living Breakwaters CAC were accepted until June 30, 2015.

Initial applications for the LWTB CAC were accepted until October 15, 2015. The application period was open for a second round that ended on December 15, 2015, and a third round that ended on February 14, 2016.

After the initial CAC application period, GOSR will evaluate CAC applications on a rolling basis to fill vacancies.

GOSR CAC Review Panel

The GOSR CAC Review Panel identifies potential CAC members through application submissions and considers recommendations regarding the candidate. All candidates must submit applications to GOSR to be considered.

Committee members will be selected with the goal of creating a CAC representative of the community as a whole. GOSR will take into consideration issues of geography, diversity, and the necessity to ensure participation of historically disengaged groups. In an effort to advance the educational and green infrastructure components of each RBD project, GOSR will also seek to include on the CAC, individuals with an interest in community engagement, social resilience, science, and natural systems. Over the life of each project, GOSR will look to fill potential gaps in the voices represented on the committee and strive to balance these deficiencies by identifying additional potential members.

Acknowledging the importance of each project's regional context, the Living Breakwaters CAC will be comprised primarily of stakeholders from Staten Island and New York City, and the LWTB CAC will be comprised primarily of stakeholders from Nassau County communities adjacent to the Mill River. As outlined in the application all CAC members must abide by the RBD CAC Member Code of Conduct (described below).

RBD CAC Member Code of Conduct

Committee Member behavior will be governed by the RBD CAC Member Code of Conduct. The Code covers each CAC Member's obligation to:

- Always act in the public interest;
- Hold themselves to a high ethical standard;
- Not use the position of CAC membership to secure unwarranted benefits for themselves, their family, or their business associates;
- Not engage in any conduct that will give the appearance of impropriety;
- Resign their position as member of the CAC if they choose to run for public office;
- Disclose all potential and actual conflicts of interest;
- Acknowledge that they may be removed from the CAC at GOSR's discretion.

CAC Members must acknowledge in writing that they have read and understand the RBD CAC Code of Conduct and are required to disclose to the GOSR Ethics Officer any real or potential conflicts of interest that might arise from participation and membership on the CAC prior to an appointment being made.

1.4.1.4 Public Participation during Environmental Review for Rebuild by Design

GOSR will engage in robust and open public engagement throughout the environmental review process to ensure that the projects comply with State and federal environmental requirements and consider sound environmental practices. GOSR will undertake the required environmental review process for each RBD project, which includes multiple opportunities for public review and comment. GOSR will abide by the public notice and scheduling requirements set forth in 24 CFR 58.56 and 58.59 for any Environmental Impact Statement (EIS). Opportunities for public notification and comment will be provided on all environmental reviews.

GOSR will accept both written and oral comments from the public on the draft scopes of all projects subject to an EIS and/or EA and will consider these comments when preparing the final scopes. If final EIS of other project plan development result in material changes to the project, GOSR will conduct an additional round of public hearings or meetings and provide a period for public comment as part of an RBD project-specific Action Plan Amendment¹ (APA), as required by HUD. As it prepares the final environmental reviews for all projects, the State will consider and respond to the public comments.

The purpose of these public hearings and meetings is to allow community members and the public to raise issues and concerns to be evaluated in the environmental review process. This will ensure that the review is substantively robust, as well as responsive to any community issues with the projects. GOSR will also provide updates on the ongoing environmental review process at CAC meetings. It is anticipated that engaging the CAC will ensure that the community stays engaged in the process and understands the impacts the work that these projects entail.

1.4.1.5 Process for Making Information Available

Information relating to the RBD projects is made available on the GOSR website at: <https://stormrecovery.ny.gov/infrastructure/rebuild-by-design>. In addition to the website, GOSR uses both print and electronic media to make the public aware of meetings and substantial changes to RBD projects. The website has a page for each RBD project that the public can access. GOSR intends to use the information on these pages as the primary means by which the public can stay informed about each project.

Each RBD project page includes information on the current membership and activities of the CAC, background information, project timelines and updates, and budgets as they become available. As projects move from conceptual design into environmental review phase, environmental review documentation will be prominently shown on the website. As final project designs and alternatives are determined for the environmental review, the list of preferred and alternative models will be shown on the webpage. As projects move into construction phases, the webpage will provide information that highlights and informs the public about the construction phase and progress.

The webpage is designed to inform the public about the RBD projects, including when the CAC will hold meetings and what materials will be presented. Given that CAC meetings are intended to provide both program updates and obtain ideas from interested parties that relate to the RBD

project, GOSR posts meeting agendas, along with materials that are presented and discussed at the CAC.

2.0 Summary of Rebuild by Design Living Breakwaters (LB)

Location: Staten Island, New York (Richmond County)

The Living Breakwaters is an innovative coastal green infrastructure project that aims to increase physical, ecological, and social resilience. The project is located in the waters of Raritan Bay (Lower New York Harbor) along the shoreline of Tottenville and Conference House Park, from Wards Point in the Southwest to Butler Manor Woods in the Northeast. The project area is a shallow estuary that has historically supported commercial fisheries and shell fisheries.

Living Breakwaters is a comprehensive approach to resiliency through the following on-shore and off-shore components::

- A system of specially designed off-shore breakwaters which will attenuate waves and counteract beach erosion and which include materials and features specially designed to promote biological activity and promote recruitment of marine species;
- Ecological enhancement and activities, including supporting future oyster restoration including: oyster cultivation (including hatchery expansion and remote setting facility), shell collection and curing, and the installation of oysters on the breakwaters in addition to oyster nurseries in Lemon Creek and Great Kills Harbor that create and enhance ecological connectivity across sites for oyster larvae and mobile species (such as fish and crabs) that inhabit them;
- Social Resiliency and Educational activities, including school curriculums focused on the ecological benefits of oyster installations, resiliency and how the Living Breakwaters project works and associated field work opportunities for local and citywide students, as well as educational walking tours, annual shoreline monitoring events, and a Living Breakwaters installation at Conference House Park, adjacent to the project site. These activities will provide a location for orientation, education and informational activities related to shoreline resiliency, ecological and oyster restoration and the breakwaters; and
- Shoreline restoration to provide sand fill to a segment of the beach which has experienced significant erosion up to and including Superstorm Sandy (at the rate of approximately 2 feet per year from 1978 to 2012).

For additional information about the RBD Living Breakwaters project, see the NYS Action Plan: <https://stormrecovery.ny.gov/funding/action-plans-amendments>.

3.0 HUD CDBG-DR Requirements

3.1 Meeting CDBG-DR Program Requirements

The RBD competition was designed to ensure that the teams competing in and applying for the competition funds were informed that CDBG-DR funds would be used to implement these projects and that they would need to comply with CDBG-DR eligibility requirements. The competition was unique in that it integrated long term community recovery needs with a desire to implement these actions through the use of natural resiliency measures. As the grantee, GOSR implements all HUD requirements and facilitates the goals of the RBD competition.

3.1.1 Tie to the Storm

As part of the RBD competition, design firms developed projects that were located in counties which received a disaster declaration following Superstorm Sandy. Design firms also researched and analyzed projects to demonstrate a tie to the storm. In the October 16, 2014 Federal Register Notice (FR-5696-N-11), HUD informed grantees that RBD projects had met this requirement during the design competition.

3.1.2 Meeting a National Objective

The Living Breakwaters Rebuild by Design project meets the Urgent Need National Objective. The October 16th, 2014 Federal Register Notice (FR-5696-N-11) establishes that “through the research and analysis conducted as part of the competition, RBD Projects have demonstrated an acceptable connection to recovery from the direct and indirect impacts of Hurricane Sandy.” In addition, the State has documented how the project responds to a disaster related impact in its Action Plan, as required by the Urgent Need National Objective waiver in the March 5th, 2013 Federal Register Notice (FR-5696-N-01) and subsequent Federal Register Notices.

3.1.3 Meeting an Eligibility Activity

In the October 16th, 2014 FRN, HUD waived 42 U.S.C. 5305 (a) to the extent necessary to create a new CDBG eligible activity, “Rebuild by Design,” that includes RBD pre-development, construction, and implementation case study and lessons learned document costs. RBD projects, including Living Breakwaters, are eligible under this eligible activity, subject to HUD’s determination that the project remains as consistent with the RBD proposal as practicable and appropriate, as reflected by Action Plan Amendment approvals. However, RBD funds expended on planning and general administration must be considered as those respective eligible activities for purposes of calculating compliance with the respective caps.

3.1.3.1 DRGR Identification

HUD guidance on how RBD projects should be set up in DRGR is that while the eligible activity is “Rebuild by Design,” GOSR must select from existing HUD eligible activities types in DRGR for these projects.

Due to the nature of expected construction-related activity that is to be performed in this RBD project, GOSR uses the ‘Public Facilities and Improvements’ eligible activity type, Section 105(a)(2) of the Housing and Community Development Act of 1974. For the social resiliency and educational components of RBD, which were critical to the overall success of the RBD competition, GOSR uses the Public Services eligible activity type (Section 105(a)(8)) but reserves

the right to use other HUD eligible activity types as needed. All RBD planning activities will fall under the planning eligible activity (Section 105(a)(9)).

3.1.4 Geographic Eligibility

For the RBD competition, HUD determined the Sandy impacted regions to be the geographic areas eligible for participation. As the competition closed and awarded projects were announced, HUD and the RBD selection panel decided on the winning design firms and project location. As mentioned previously, Living Breakwaters will be constructed in Staten Island.

3.2 RBD Regulatory Requirements

The State, as the grantee, is required to meet all applicable CDBG requirements, unless otherwise advised in Federal Register Notices. This section outlines the RBD specific requirements which HUD has deemed that the State has met, and those which the State will demonstrate meeting.

Under the October 16, 2014 Federal Register Notice (FR-5696-N-11), and as a result of the RBD competition, RBD projects are considered as having met:

- i. The definition of infrastructure projects and related infrastructure projects under Section VI.b.1 of the November 18, 2013 Notice;
- ii. The requirement for impact and unmet needs assessments and the comprehensive risk analysis under Section VI.c and VI.d of the November 18, 2013 Notice;
- iii. The process required for the selection and design of green infrastructure projects or activities under Section VI.f of the November 18, 2013 Notice; and
- iv. The additional requirements for major infrastructure projects (“Covered Projects”) under Section VI.g of the November 18, 2013, Notice.²

3.2.1 RBD Specific Requirements

Under the October 16, 2014 Federal Register Notice (FR-5696-N-11), grantees implementing RBD projects must:

- Describe the major or primary RBD project elements being developed for future implementation according to the total amount of funding (HUD and non-HUD funds) that can be reasonably anticipated as part of the RBD Action Plan Amendment process
- Develop an implementation strategy, including identification of potential funding sources and financing mechanisms, to continue the subsequent phase or phases of the selected RBD proposal
- Develop an implementation case study and lessons learned document, recording the implementation process for each RBD project, to be submitted to HUD prior to grant close-out.

With regard to the first bullet above, primary RBD project elements are included in the State’s Action Plan, and will be amended if needed through Action Plan amendments. GOSR is committed to vetting, refining and, as needed, reframing the project concepts developed through the RBD competition. GOSR is committed to continuing to engage with and provide relevant status

² However, the Initial RBD Action Plan Amendment as described in Section VI.6.a of FR-5696-N-11 must still include a description of how the grantee plans to monitor and evaluate the efficacy and sustainability of RBD Projects, and meet the resilience performance standards requirement as outlined at Section VI.2.e of the November 18, 2013 Notice.

updates to HUD and present status reports to other federal agencies as appropriate, through the Sandy Regional Infrastructure Resilience Coordination Group (SRIRC), which is a group comprised of federal, State, and local officials. GOSR will ensure that projects are implemented consistent with the objectives of the RBD competition and will utilize the experience that the State possesses in considering the technical, fiscal, environmental, legal, and other constraints or opportunities that exist for these projects. When major design and construction milestones are approaching and completed, GOSR will engage and meet with HUD and other Federal partners as necessary, to discuss the projects and provide documentation to show that the projects meet the objectives and goals of the competition. GOSR will ensure that each RBD project achieves independent utility consistent, to the greatest extent practicable and appropriate, with the proposal selected through the RBD competition.

GOSR developed an implementation strategy, including identification of potential funding sources and financing mechanisms, to facilitate the completion of subsequent phases of the RBD project. GOSR's planning activities ensured continuity and connection between the completed RBD project and other resilience plans and strategies.

GOSR is also cognizant of the importance of maintenance and operations arrangements to the ongoing efficacy of the RBD projects. As such, prior to construction, agreements, including maintenance and operation plans and budgets will be in place..

For the Living Breakwaters RBD project, NYSDEC will own and operate the breakwaters and will be fully responsible for their maintenance and for monitoring their performance in accordance with permit requirements. The breakwaters have a 50-year design life and are designed to function in a 100-year storm. Monitoring frequency for the project's resiliency performance will be re-evaluated by NYSDEC after fifteen years after the completion of construction. NYSDEC will be responsible for the necessary monitoring tasks as established in USACE permit for the breakwater component of the project, issued March 17, 2021.

GOSR will develop an implementation case study and lessons learned document, to record the implementation process for each RBD project and will submit these to HUD prior to grant close-out. GOSR will develop both the lessons learned and case study documents based on the guidelines provided by HUD in Notice CPD-16-06.

3.2.2 Infrastructure Requirements

Per the Federal Register Notice of November 18, 2013 (FR-5696-N-06), an infrastructure project is defined as an activity, or a group of related activities, designed by the grantee to accomplish, in whole or in part, a specific objective related to critical infrastructure sectors such as energy, communications, water and wastewater systems, and transportation, as well as other support measures such as flood control.

HUD requires grantees in receipt of RBD funds to include in their Action Plan a description of:

1. How the grantee plans to monitor and evaluate the efficacy and sustainability of major infrastructure projects, including how it will reflect changing environmental conditions with risk management tools, and/or alter funding sources if necessary, and
2. How the grantee will meet the resilience performance standards requirement outlined in Section VI.2.e of the November 18, 2013 Federal Register Notice for the RBD Project(s).

Information relating to these requirements for Living Breakwaters can also be found in the New York State Action Plan, available online at: <https://stormrecovery.ny.gov/>.

3.2.3 Resilience Performance Standards

The State has committed to implementing the resilience performance standards for RBD projects as outlined in the State's Action Plan. The Action Plan includes a description of how GOSR will monitor and evaluate the efficacy and sustainability of Living Breakwaters, and meet the resilience performance standards requirement. Consistent with Section VI.2.e of the November 18, 2013 Federal Register Notice (FR-5696-N-06), GOSR implements resilience performance standards for the Living Breakwaters project.

3.2.4 Monitoring and Evaluating Efficacy and Sustainability

A Monitoring Schedule, in accordance with project permitting requirements, monitors the resiliency benefits and mitigation features that the design anticipates, including beach growth/stabilization, wave attenuation, water quality and biological enhancement.

3.2.5 Certification of Final Designs

All final designs will be certified by stamp and seal of the engineer of record. Final certified designs will be stored on the system of record when available.

3.2.6 Operation and Maintenance

NYSDEC will own and operate the breakwaters and will be fully responsible for their maintenance and for monitoring their performance. The State of New York, through a Memorandum of Agreement with NYSDEC has committed to the long-term maintenance and operation of this important resiliency measure. NYSDEC is the state agency whose mission is to conserve, improve and protect the State's natural resources and the environment. NYSDEC includes a Division of Marine Resources with specific responsibility for managing and enhancing marine resources and their habitats, and is therefore uniquely qualified to undertake the responsibilities of the long-term maintenance of the breakwaters.

Basic maintenance and operations of breakwater structures is anticipated to be minimal, with visual inspection of structures required no more than biannually. Maintenance will likely only be necessary following storm events. The breakwaters have a 50-year design life and are designed to function in a 100-year storm. A basic post-storm event inspection may reveal maintenance work such as stone adjustments or replacement, but such maintenance is expected to be, at most, minimal.

3.3 Multi-Phase Requirements for Subrecipients

3.3.1 Timely Expenditure of Funds

CDBG-DR funds must be obligated no later than September 30, 2017, and expended within two years of the date funds are obligated, unless an extension is granted by HUD. GOSR obligated all PL 113-2 funds in January 2017. HUD approved an expenditure extension for RBD funds to September 30, 2023.

3.3.2 Duplication of Benefits

Disaster recovery activities may be funded from a variety of both public and private sources. The Stafford Act's prohibition on duplication of benefits (DOB) in section 312 (42 U.S.C. 5155) is applicable to all CDBG-DR grants. Generally, financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds is considered a DOB.

Any use of CDBG-DR funds must take into consideration all other project funding sources and deduct all funds that could be considered a DOB. As part of the application process (described below), each subrecipient submits a form detailing all funds received for a project. Per the subrogation clause in GOSR's Subrecipient Agreements, subrecipients must return to the State any funds found to be a DOB, ineligible, unallowable, unreasonable, or non-compensable, no matter the cause. Under this clause, should a subrecipient receive CDBG-DR funding to support an activity and subsequently receive outside funding that would render the CDBG-DR funds a DOB, the duplicative CDBG-DR funds must be returned to GOSR.

For subrecipient-led RBD projects, subrecipients must submit a DOB Questionnaire two times, with an Application for Funding and during project closeout. For non-capital projects where there is no engineering/design phase, self-certification questionnaires submitted by subrecipients will be submitted twice: upon submission of the application and at closeout. There is no review of EMMIE or the MB3 database because non-capital projects are not funded by these sources of funds.

For Subrecipient-led capital project components, the Subrecipient, must complete and certify a DOB questionnaire before the execution of a Subrecipient Agreement amendment providing funds for construction. Program staff verifies the information provided by searching for additional funding sources for the subrecipient's project's scope: FEMA (PA); Hazard Mitigation Grant Program (HMGP); and Army Corps (USACE). This DOB check is completed again before project closeout.

For the GOSR-implemented component, a memo confirms the sources of funding for the component and confirms whether there are any duplication of benefits. An additional DOB memo for the GOSR-led construction components will be completed at project closeout to confirm the information included in the original DOB memo or document any changes.

3.3.3 Order of Assistance

Following the hierarchy of funding enumerated in the Stafford Act, CDBG-DR funds will never displace other available funds (see Duplication of Benefits, [Section 3.3.2](#)). FEMA regulations at 44 CFR 206.191 make clear the order of funding assistance, and, as noted in the November 16, 2011 Federal Register Notice (76 FR 71060), "Since recovery provides long-term recovery assistance via supplemental congressional appropriations, and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance."³

³ Federal Register Notice Vol. 76, No. 221 (November 16, 2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29634.pdf>.

Projects developed and/or funded by GOSR through the Living Breakwaters Program are reviewed for applicability and eligibility against other Federal disaster recovery programs managed by FEMA and U.S. Army Corps of Engineers (USACE) to determine whether Order of Assistance issues exist. This analysis is documented in the Program's **Order of Assistance memo**.

3.3.4 Program Income

The State follows the program income requirements of 24 CFR 570.489(e) consistent with the alternative requirements set out in the March 5, 2013 FRN with regards to program income. Program income is defined in the March 5, 2013 FRN, including commonly for RBD purposes, as: the "gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out". The March 5, 2013 FRN indicates that the Federal awarding agency regulations or the terms and conditions of the federal award may provide for the disposition of program income. GOSR's subrecipient agreements require that all program income must be reported and returned to the State by default, but may be modified for subrecipient program income retention consistent with 24 CFR 570.489 (e) as amended by the FRNs).

RBD Program staff are responsible for monitoring, identifying and tracking all projects that may generate program income. The subrecipient is also responsible for reporting on whether the activities funded by GOSR will generate revenue or support other revenue generating activities as part of the completion of the Subrecipient Quarterly Progress Report (QPR). For program participants that do not submit a QPR, it is the responsibility of RBD Program staff to identify potential program income.

Subrecipients or program participants who self-identify, or are identified by RBD Program staff as potentially generating program income must fill out a Program Income Pro Forma annually, until the closeout of the SRA, unless GOSR determines otherwise.

If, after reviewing the Program Income Pro Forma, the generation of program income is possible, the subrecipient agreement or project management agreement and any program documents, such as the application, must be amended to reflect the generation of program income and how it will be returned to the State or retained by the subrecipient for eligible disaster recovery activities.

At subrecipient closeout, if program income has been or is expected to be generated, all program income is required to be returned to the State, and subrecipients and program participants are no longer able to retain program income. Subrecipients or program participants are required to complete a final long term pro forma to disclose any anticipated future generation of program income. If former subrecipients or program participants generate program income at any time after subrecipient closeout, it must be repaid to the State.

3.3.5 Force Account Labor

Force account labor (FAL) occurs when subrecipients use their own workforce to complete construction of a RBD project. This is not the preferred method of construction for RBD projects, however, it is allowed and is expected to occur as some RBD project work will be undertaken by

State, county or local governments. Force account labor requires advance review and approval by GOSR. Subrecipients that proceed without prior approval risk disallowance of all incurred costs. Subrecipients must justify the use of force account labor by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work.

Subrecipients may undertake FAL provided the Program approves prior to subrecipients undertaking the initiative. Should subrecipients decide to utilize FAL, subrecipients must have:

- A skilled workforce;
- Proper supervision;
- Management control system; and
- Capacity to serve as their own general contractor.

Subrecipients must also determine that:

- They can meet the basic requirements.
- The nature, scope, and type of work items planned could be better accomplished by hiring dedicated labor staff rather than contracting in the open market.
- The benefits of using force account labor outweigh the costs. To determine this, subrecipients must do a cost-benefit analysis.

For subrecipients that want to utilize FAL, the Program provides subrecipients with a FAL proposal form, sample request for FAL letter from the subrecipient to Executive Director/General Counsel, sample FAL timesheet, and sample FAL equipment record. GOSR must authorize the use of FAL.

3.3.6 Acquisition of Real Property

If upon notification of permission from GOSR, the subrecipient proceeds with efforts to acquire any real property, including easements, right-of-ways and temporary construction easements, required for the project, URA requirements will be followed as applicable (see [Exhibit 1](#)).

A purchase option agreement on a proposed site or property prior to the completion of the environmental review is allowed if the option agreement is subject to a determination by the subrecipient on the desirability of the property for the project after the environmental review is completed and the cost of the option is a nominal portion of the purchase price. Prior to advertising for bids, the subrecipient must have obtained all lands, rights-of-way and easements necessary for carrying out the project.

Program policies, NOFAs, applicant certifications and/or written agreements for funds subject to the Uniform Act and Section 104(d) shall refer to federal and State rules, as appropriate.

If CDBG-DR funds are used to acquire real property or personal property, the subrecipient is responsible for ensuring that:

- The property continues to be used for its intended (and approved) purpose;
- The subrecipient keeps track of, and takes care of, the property; and
- If the subrecipient sells or disposes of the property within five years after expiration of the Subrecipient Agreement or a longer period as GOSR deems appropriate, the subrecipient reimburses GOSR for the share of the property's value according to the Subrecipient Agreement and the sale proceeds will be treated as Program Income.

3.3.7 Procurement Policy

GOSR procurement of professional services or construction vendors follows the policies and procedures in the GOSR Procurement Policy manual, available at www.stormrecovery.ny.gov. Subrecipients must follow federal, State and local procurement rules when purchasing services, supplies, materials or equipment. The procurement requirements found at 2 CFR 200.317-326 establish CDBG-DR standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services. Subrecipients must also follow applicable conflict of interest provisions in federal, State, and local regulations. If a real or perceived potential conflict of interest is identified, subrecipients must contact GOSR for further guidance.

3.3.7.1 Construction Services

GOSR issues a notice authorizing the subrecipient to advertise for bids following the completion of:

- A review of plans and specifications and completion of a bid checklist by GOSR;
- As appropriate, a review of plans and specifications for code compliance by a third party.
- Environmental clearance of proposed construction activities;
- Verification that all lands, rights-of-way and easements have been acquired; and
- Verification that all other program requirements have been met.

After authorization to advertise for bids has been issued, the subrecipient may proceed with public advertising for bids in accordance with federal, State, and local procurement standards. Generally, under New York law, local governments are required to advertise for competitive bids for public work contracts in excess of \$35,000. The contract should be awarded to the lowest priced responsible bidder that has complied with the specifications. In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, the subrecipient must contact GOSR to determine the best option to proceed. Starting in September 2016, whenever possible for capital projects, application approval and authorization to enter into a construction contract are granted to a subrecipient at the same time.

For RBD projects, GOSR provides enhanced direct TA to subrecipients at key review points to ensure that as projects move from design, to bid, to pre-construction and eventually construction, that projects remain HUD compliant.

GOSR has directly procured a construction firm in order to complete portions of the LB project. GOSR follows the procurement policies outlined in the GOSR Procurement Policy Manual.

3.3.7.2 Contracting with the Winning Design Teams

HUD allowed New York State the ability to engage in a non-competitive, single source procurement⁴ for the “design teams (or members of the design teams) that participated in the development of selected RBD proposals through the HUD-sponsored RBD competition.”

Therefore, the State entered into a contract with SCAPE, the winning RBD design team who submitted the Living Breakwaters proposal, to assist in the project from the pre-planning and environmental review phases through construction. The State ensured that all costs were necessary and reasonable. Additionally, GOSR ensured that the winning design teams were in good standing with the State of New York.

3.3.8 Insurance and Property Management

Subrecipients must procure and maintain insurance for the duration of the SRA to protect all contract assets from loss due to any cause, such as theft, fraud and physical damage. Each subrecipient must maintain fidelity bond coverage for all employees in an amount equal to all cash advances from GOSR. At a minimum, subrecipients must comply with the bonding requirements at 24 CFR 85.36 or 84.48 (as applicable and as amended by 2 CFR 200), and with the requirements of their SRA.

If CDBG-DR funds are used to acquire real property or personal property, the subrecipient is responsible for ensuring that:

- The property is used for its intended (and approved) purpose;
- If the subrecipient sells or disposes of the property within five years after expiration of the Subrecipient Agreement or a longer period as GOSR deems appropriate, the sale proceeds will be treated as Program Income pursuant to [Section 3.3.4](#).

GOSR Subrecipient Agreements require that subrecipients incorporate GOSR’s Supplementary Conditions for Contracts (Supplementary Conditions) in any contract entered into under the Subrecipient Agreement. The Supplementary Conditions require that any contractor providing services to a GOSR subrecipient must obtain and maintain certain types and amounts of insurance coverage. The Supplementary Conditions also provide that GOSR may waive, decrease, alter or amend these insurance requirements in writing.

In addition to general liability insurance, if the subrecipient receives CDBG-DR funding for acquisition and/or construction purposes for property that is insurable under the National Flood Insurance Program (NFIP) and the insurable property is located in a Special Flood Hazard Area (also known as the 100-year floodplain), the subrecipient will be required to obtain and maintain flood insurance in perpetuity for all such property for which funding is provided. To the extent possible, flood insurance coverage should be in place prior to the start of CDBG-DR-funded construction. If coverage cannot be obtained because the unimproved asset is not eligible for flood insurance, this requirement is effective—to the extent the improved asset is eligible for insurance—once property is acquired or improvements constructed with CDBG-DR funds. Flood

⁴ The October 16, 2014 Federal Register Notice (FR-5696-N-11) referred to 24 CFR Part 85.36. This has now been superseded by the transition to 2 CFR 200 and the applicable regulations in the super circular now apply.

insurance requirements are outlined in the SRA, and subrecipients and program participants are notified of the requirement.

The requirements of 42 U.S.C. 5154a prohibit Federal disaster relief assistance made available in a flood disaster area from being used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Subrecipients in the Living Breakwaters program are not engaged in repairs or replacement of personal, residential, or commercial property.

Insurance Waivers- Professional Services Contracts (Contractor)

It is typically the responsibility of GOSR's Chief Financial Officer to determine when a waiver or alteration of insurance requirements is appropriate. However, at their discretion, RBD project staff, including GOSR legal counsel representing the Program, may waive additional insurance requirements of a professional services contract when a subrecipient's professional services contractor presents evidence that they carry at least \$2 million of general liability insurance and where the total budget of the relevant contract does not exceed \$1 million. If a contract does not meet these criteria, RBD project staff should consult the Chief Financial Officer before taking further action.

Insurance Waivers- Not Engineering, Design or Construction Contracts (Contractor)

Insurance requirements for subrecipient contracts that are under \$100,000 and not for engineering, design, or construction may be waived or lowered if the subrecipient has met and documented its own insurance requirements through an up-to-date and properly endorsed Certificate of Insurance. The subrecipient must request this waiver and RBD Program staff must submit the Certificate of Insurance along with a very brief description of the request to waive insurance to the General Counsel, who will approve or deny the request. RBD project staff inform the subrecipient of the waiver approval and documentation of the waiver approval is uploaded to the relevant project database and system of record.

Insurance Waivers- Automobile Insurance (Subrecipient and Contractor)

As long as a subrecipient or their contractors formally certify (by letter from an authorizing official) that they do not own a car and will not use a motor vehicle in carrying out the work for their contract, the requirement for automobile insurance can be waived.

Insurance Waivers- Workers' Compensation (Contractor)

If a firm that a subrecipient contracts with does not have workers' compensation insurance, New York State law requires a Certificate of Attestation of Exemption from Workers' Compensation (Form CE-200). Firms must complete an application, available through the New York State Workers' Compensation Board website, and furnish GOSR with a copy of the certificate. Certificates are only valid for the specific license, permit or contract and the period for which it is issued. Certificates for building permits are job-specific and a separate certificate will be required for each building permit.

3.3.9 RBD Recordkeeping and Audit Trail

In addition to the information contained within the ‘Record Keeping, Retention, and File Management’ section of Exhibit 1, for each RBD project, GOSR has developed a system of record and case management. The GOSR system of record serves as GOSR’s information management system for the RBD projects, containing project documentation, including but not limited to, project selection, development and implementation activities, Subrecipient Agreements and other agreements, and financial management. This ensures data security and oversight, while creating a clear audit trail of the project’s documentation including, but not limited to, CDBG-DR documentation, GOSR approvals for payment, cost determination and cost reasonableness determination. The Procurement and Contract Administration (PCA) Department’s system of record houses GOSR-led procurement documents. The Monitoring and Compliance Department’s system of record, Elation houses GOSR procured vendor compliance documents relating to Minority and Women-Owned Business Enterprises (M/WBE) and Section 3. Environmental review records are maintained by BERA and invoice and payment documentation is maintained on Elation.

3.3.10 Audit Requirements

In accordance with 2 CFR 200 Subpart F (replacing the OMB A-133 Circular), all non-federal entities expending \$750,000 or more in Federal funds during their fiscal year must have an annual audit conducted, as detailed in 2 CFR 200. Subrecipients that fall within this category must submit a copy of their single or program-specific audit report to GOSR. If any findings result, RBD project staff will alert the MCD. The MCD will review the audit report and determine whether any of the findings impact GOSR funding, necessitating a management decision from GOSR. Any deficiencies noted in the management decision must be fully cleared by the subrecipient within 30 days, unless otherwise instructed by GOSR, after subrecipient receives the management decision.

Subrecipients that expend less than \$750,000 in Federal funds must complete a Single Audit certification for the most recently concluded fiscal year and submit this with a financial report, if one exists, to GOSR. Types of acceptable financial reports include are an Independent Auditor’s Report, if a subrecipient has one, or, if a subrecipient is a municipal corporation, it may submit a New York State Comptroller Annual Financial Report (AUD). All entities that do not meet the single or program-specific audit threshold may submit a New York State Charity Bureau Annual Filing Report, if they have one. Non-profit or municipal subrecipients that do not have any of these documents must provide GOSR with an internally-generated balance sheet and income statement related to the expenditure of CDBG-DR funds.

3.3.11 Technical Assistance to Subrecipients

To assist subrecipients in complying with all CDBG-DR regulations and any GOSR policies, as well as to build the subrecipient’s capacity, GOSR and RBD Program staff provide subrecipients with necessary TA.

GOSR’s TA may be comprised of formal trainings (prepared materials, in-person presentations and webinars) and informal trainings (verbal or written advice, provided as needed, through in-person meetings, emails or telephone calls). TA occurs at every step of the implementation process as necessary, from the initial assessment period through project closeout.

3.3.12 Mitigation Requirements for Activity in Flood Plain

BERA will review proposed designs as part of the environmental review process and document compliance with mitigation requirements for any activities in the flood plain in the project's Environmental Impact Statement. The Living Breakwaters Team will oversee design and construction, either by the subrecipient or GOSR, to confirm compliance with the designs and procedures documented in the Environmental Impact Statement.

3.4 Monitoring and Compliance Department (MCD)

GOSR has established a monitoring plan administered by the Monitoring and Compliance Department (MCD). The MCD's monitoring plan is implemented in six month periods and generally includes two types of monitoring: programmatic monitoring and external monitoring.

- Programmatic monitoring includes assessments of key internal controls and compliance with program policies and procedures, contractual requirements, applicable State and Federal regulations, and GOSR's Action Plans and Amendments.
- External monitoring is performed for GOSR subrecipients, developers, and other parties to GOSR agreements, and consists of monitoring compliance with contractual requirements, applicable State and Federal regulations, and program requirements.

3.4.1 Programmatic Monitoring

The RBD Program is included in the MCD's programmatic monitoring plan. This monitoring focuses on functions being performed by GOSR programs. It is intended to provide reasonable assurance that GOSR programs have efficient and effective internal controls, including controls to ensure that:

- Programs achieve their intended results;
- Resources are used in a manner consistent with the agency's mission;
- Programs and resources are protected from waste, fraud, abuse, and mismanagement;
- Laws, regulations, and applicable policies and procedures are followed; and
- Reliable and timely information is obtained, maintained, reported, and used for decision-making.

3.4.2 External Monitoring

Subrecipients involved in the implementation of the RBD Program are included in the MCD's external monitoring plan. Through external monitoring, MCD identifies risks and deficiencies and provides recommendations for corrective actions or technical assistance to address risks.

3.5 Compliance Department

As of February 2020, the MCD has absorbed the portfolio and functions of the Office of Diversity and Civil Rights (DCR). Accordingly, the Compliance Department works closely with subrecipients and contractors to advance GOSR's mission, while increasing access to its workforce and contracting opportunities. This is achieved through advocacy, outreach, technical assistance and training, regulatory review, and program implementation. Further, the Compliance team performs regular reviews of required diversity reporting, as well as review of utilization plans, achieved utilization, and documentation of efforts to meet the established diversity

goals. The Compliance team facilitates GOSR's compliance with several federal and State diversity and inclusion regulations including: the Minority and Women-Owned Business Enterprises (M/WBE), Fair Housing & Equal Opportunity (FHEO), and HUD's Section 3 Program.

The Compliance team also oversees important accessibility issue areas, including: Limited English Proficiency (LEP), Americans with Disabilities (ADA), and Section 504 of the Rehabilitation Act.

The Compliance team serves as an internal resource for GOSR, providing support to Programs, subrecipients, and vendors, in achieving compliance with statutory requirements and diversity objectives. The Compliance Department's programmatic support services include:

- Working with NYRCR projects to ensure they are aligned with GOSR's diversity and civil rights requirements;
- Reviewing and providing guidance on Section 3 and M/WBE documents submitted by vendors as needed, such as utilization plans and efforts;
- Conducting technical assistance and trainings with internal Program staff, subrecipients and contractors;
- Planning and executing networking events which bring together GOSR subrecipients and contractors with M/WBE and Section 3 businesses looking for contracting opportunities; •Participating in pre-bid, pre-construction, and project meetings to consistently be a resource and provide strategic advice where required;
- Providing policy and regulatory guidance pertaining to applicable diversity regulations, particularly M/WBE and Section 3 requirements;
- Strategically identifying M/WBE and Section 3 firms in order to facilitate the dual goals of providing greater opportunities to M/WBE and Section 3 firms, while also assisting Program in meeting their goals and requirements;
- Working with subrecipients and vendors to utilize the New York State Storm Recovery Opportunities Portal (NYSSROP) in order to post procurement and job opportunities in order to recruit and source M/WBE and Section 3 businesses and Section 3 residents;
- Working with subrecipients, contractors, and Program staff to ensure that all required diversity reporting is properly submitted;
- Analyzing subrecipient and contractor compliance with reporting requirements and utilization goals; and
- Providing hands-on technical assistance to subrecipients and contractors where there is a gap between their project's required goals and current utilization.

3.6 Investigations

The Investigations Department at GOSR is responsible for the following duties:

- Managing a fraud hotline;
- Processing all incoming complaints relating to fraud, misconduct, and wrongdoing;
- Reviewing and analyzing such complaints;
- Obtaining relevant programmatic information to assess such complaints; and

- Determining appropriate further action, including but not limited to further internal investigation, referral to the appropriate law enforcement agency, and corrective action to address any risks or deficiencies in existing programmatic policies and procedures.

4.0 Rebuild by Design Policies

GOSR is the grantee agency responsible for implementation of the Living Breakwaters RBD project. Portions of the project will be directly implemented by GOSR (“GOSR-led”). GOSR will procure and manage contractors/vendors to complete design and/or construction work. Other portions will be implemented by subrecipients (“subrecipient-led”). GOSR will enter into an agreement with a subrecipient, who will be responsible for managing a project or a component of a project, which may include procuring and managing a contractor/vendor. The project structure of Living Breakwaters will follow the implementation process outlined in this manual. This section of the Manual will serve as an overview of the Living Breakwaters project implementation policies.

4.1 Pre-Construction and Design Development Policies

4.1.1 Coordination with Federal and State Partners

The nature of the RBD projects necessitates that the State engage with federal and State agencies. Federal partners include HUD, the Army Corps of Engineers (USACE), the US Environmental Protection Agency, National Oceanic and Atmospheric Administration (NOAA), US National Park Service (NPS), Department of Interior (DOI) and other federal agencies. GOSR’s goal is to facilitate federal coordination and consultation, including through the SRIRC and to maintain consultation and coordination with HUD.

4.1.2 Sandy Regional Infrastructure Resilience Coordination Group

The objective of the SRIRC is to support regional resilience through federal infrastructure investments, consistent with grant requirements contained in Public Law 113-2, and the Infrastructure Resilience Guidelines (pages 50-52) of the Sandy Rebuilding Strategy by:

1. Gathering, discussing, and considering technical information related to planned and proposed projects in order to identify opportunities to enhance resilience
2. Advising grantees and project sponsors on project scopes so that the projects may have enhanced resilience, individually or together
3. Identifying potential implementation challenges such as funding and/or federal review and permitting issues that can be addressed through collaboration or referral to appropriate federal committees or groups dedicated to the issues.

For the Living Breakwaters project, GOSR utilizes the SRIRC process and presents project plans to this group to take advantage of the ability to discuss technical components of both projects, to see if additional resilience values can be obtained from the federal partners, and to discuss funding options and challenges.

Federal grantees are also able to request that projects are considered/discussed by the Sandy Regional Team for Federal Review and Permitting (FRP) at any time to help coordinate and expedite the collective review and permitting processes necessary. The FRP process is required for all RBD projects. GOSR’s policy for the RBD projects is to utilize the FRP process for Federal environmental permitting process.

4.1.3 Coordination with State Partners

GOSR engages with State agencies and authorities in addition to federal parties. Within the State, there are several agencies and authorities that will play specific roles in the RBD projects. These

agencies include, New York State Department of Environmental Conservation (DEC), Department of State (DOS), and Department of Homeland Security and Emergency Services (DHSES), Department of Transportation (DOT), and the NYC Metropolitan Transit Authority (MTA). Living Breakwaters coordinate with the appropriate agencies as applicable, on regulatory and permitting components of the projects. To the extent feasible, GOSR has developed a coordinated and complete consultation process that involves the relevant government agencies as part of the environmental permitting processes.

4.1.4 Coordination with Local Partners

Each of the RBD projects also requires careful consultation with local governments. With respect to the Living Breakwaters project, the State will perform outreach to the City of New York and relevant city agencies, including the Mayor's Office of Recovery and Resiliency, the Department of Parks and Recreation, the Department of Environmental Protection, the Department City Planning, as well as the Office of the Borough President and any other stakeholder if the need arises.

4.2 Post Award Analysis and Design Changes

GOSR worked with the respective design teams as well as the environmental teams to review the feasibility of the awarded design. In following the goals of the RBD competition, the project team assessed the scope of the Living Breakwaters project and recommend appropriate changes. Through this process, GOSR worked to refine the project designs and submit them to the SRIRC and/or FRP for review. In addition, the NYS Action Plan reflects the final RBD projects, as approved by HUD.

4.3 Implementation Partnerships

For each RBD project, GOSR serves as the lead agency and consults closely with interested governmental and non-governmental stakeholders. The State understands that the partnership and coordination of partners throughout the life of each RBD project is crucial for its success. GOSR documents in its Action Plan the implementation partners that were identified and what actions were taken to include them in the project.

4.4 Leveraging of Funds for RBD Projects

The State is committed to the successful implementation of both RBD projects using the allocations provided and understands the need to identify and secure additional funding outside of the CDBG-DR allocation as needed. As explained in the Action Plan, the State will consider funding opportunities such as federal, State or private grants, and collaboration with not-for-profit and academic institutions focused on similar resiliency actions, as well as financing opportunities, which can be leveraged alongside CDBG-DR for investment.

4.5 Project Memo

GOSR completed an **RBD Project Memo** to document project information for the GOSR-implemented components of the project, including scope description, budget and timeline.

4.6 Subrecipient Selection Policies

For projects or portions of projects identified as being best suited for subrecipient-led implementation, GOSR selects a suitable subrecipient and undertakes application process. The Living Breakwaters Program selected the NY Harbor Foundation for the social resiliency and oyster installation components, and NY/NJ Baykeeper for research and planning-related components.

GOSR selected NY Harbor Foundation-Billion Oyster Project as a subrecipient for the social resiliency and oyster installation components of the Program, given their identification in the Living Breakwaters proposal selected by HUD as a potential partner for the project, and their unique qualification and expertise in implementing projects to restore oysters in New York waterways.

GOSR selected NY/NJ Baykeeper as a subrecipient for research and planning-related components on the basis of their technical expertise in performing the required monitoring.

In preparation for application submission, GOSR staff and consultants prepared documentation discussing the proposed subrecipient's scope and eligibility. The **Application for Funding** submitted by the subrecipient includes information such as project description, budget, timeline, location, CDBG-DR eligibility, and the DOB Questionnaire.

4.7 Contractual Agreements

Once GOSR has selected a subrecipient, vendor, or partner (non-monetary partnership) for implementation of a component of an RBD project, GOSR will work with the subrecipient/vendor/partner to execute a subrecipient agreement (SRA), vendor contract, or a memorandum of understanding (MOU).

These agreements may serve as the mechanism for transfer of funds and responsibilities to the subrecipient or vendor, and require compliance with all federal, State, and local laws, as applicable. These agreements function as a MOU between GOSR and the subrecipient. These agreements may be amended, as required by specific circumstances.

If necessary, ROE agreements will be executed prior to any Program contractor or representative entering private property for program purposes. Permit-required Operations and maintenance responsibilities for Living Breakwaters are reflected in a MOU with the New York State Department of Environmental Conservation, and are subject to re-evaluation by the NYSDEC based on monitoring results.

4.8 Environmental Review Policies

CDBG-DR funding is contingent upon compliance with both State and federal environmental regulations. This includes compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. In addition, the Housing Trust Fund Corporation, as well as State agencies and units of local government (UGLGs) in New York State must comply with the State Environmental Quality Review Act (SEQRA). In general, GOSR serves as the lead agency for purposes of NEPA and SEQRA. New York City

agencies must also comply with the City Environmental Quality Review (CEQR). In general, GOSR serves as the lead agency for purposes of NEPA, SEQRA and CEQR.

Environmental review for GOSR projects is overseen by GOSR's Bureau of Environmental Review and Assessment (BERA) and the policies and procedures implemented by BERA are set forth in the BERA Policy Manual. In certain circumstances, GOSR may decide to cooperate in a joint environmental review with another federal, State or UGLGs. GOSR may also choose to delegate its NEPA or SEQRA responsibilities if, in the discretion of a GOSR Certifying Officer, such delegation is warranted and supported by law.

As explained in the BERA Policy Manual, HUD's Environmental Review Procedures allow grantees, such as New York State, to serve as the "Responsible Entity" to assume environmental review responsibilities under NEPA. In accordance with 24 CFR Part 58 and pursuant to the State's Grant Agreement with HUD, BERA has two Certifying Officers that conduct and approve environmental review documents. Within GOSR, BERA will be responsible for performing environmental reviews and compiling the Environmental Review Records (ERRs). BERA conducts environmental reviews either directly or through the use of BERA-supervised qualified environmental service contractors. The GOSR Certifying Officers are ultimately responsible with certifying that GOSR's environmental reviews are in compliance with NEPA and HUD environmental regulations.

In accordance with Public Law 113-2, when GOSR uses CDBG-DR funds to supplement federal assistance provided under Section 402, 403, 404, 406, 407, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) GOSR may adopt, without review or public comment, any environmental review, approval, or permit performed by a federal agency, and such adoption shall satisfy the responsibilities of GOSR with respect to environmental review.

4.9 Documenting Project Changes

Potential changes to projects are discussed with relevant technical staff and stakeholders which may result in change orders, contract amendments, construction change orders, Subrecipient Agreement amendments, and Action Plan Amendments, as appropriate, and are archived in the system of record.

4.10 Action Plan Amendment Process

GOSR is required to issue a substantial Action Plan Amendment for each RBD project to reflect the final RBD project. GOSR issued substantial amendment 15 to the NYS Action Plan which was the required subsequent Action Plan amendment for Living Breakwaters after Action Plan Amendment 8 where the RBD project was initially described. Action Plan Amendment 15, as approved by HUD, provided additional detail and described the RBD project. If needed, GOSR will release additional Action Plan Amendments to describe any additional changes to the RBD Project.

4.11 Project Delivery Costs

If determined by GOSR as necessary for the implementation of the project, project delivery costs may be reimbursed by GOSR. Costs must not be duplicative of services provided by GOSR through

its staff or consultants. All proposed subrecipient administrative and project delivery costs must be determined to be allowable, allocable, and reasonable during the project application review process. For subrecipients providing public services, project delivery costs are not distinguished from project cost.

Examples of project delivery costs include costs directly associated with the delivery of a project, such as staff or third party compensation for time devoted to implementation of a specific project, public notices and advertisements directly related to a specific project, and legal expenses directly related to a specific project. Examples of project administration costs include costs not directly associated with the cost of a project, such as the costs associated with a subrecipient's completion of a Single Audit.

In certain instances, fringe salary costs may be considered part of project delivery costs. Subrecipient employees who are dedicated to the project for a portion of their time, GOSR may pay the proportionate percentage of their salary, inclusive of fringe benefits. These fringe benefits may include vacation and sick time, if requested by the subrecipient and approved by GOSR.

For subrecipient employees whose time is solely dedicated to a project, GOSR may pay the employee's entire salary (including paid time off), as well as permit the subrecipient to add on fringe benefits for payroll taxes and retirement.

For either case of subrecipient employees, if a subrecipient's employee working on a GOSR project has an overall fringe benefit rate of over 40 percent, RBD Program staff must first do an analysis confirming the reasonableness of the fringe benefit. In addition, employees with higher than median fringe benefits for their organization cannot be assigned to the RBD project without prior approval from GOSR.

4.12 Payment

4.12.1 Subrecipient Payment

All Subrecipient payments are expended on a reimbursement based payment process or as necessary, in advance of anticipated expenses. "Reimbursement-based" payments are based on project costs incurred by subrecipient and documented as required by the terms of the subrecipient agreement for payment of invoices as per the payment terms in the subrecipient agreement. The subrecipient submits a request for payment package. GOSR reviews and approves the request for payment. Prior to receiving payment, all required reporting must be completed. Payment requests are processed and documented through the Elation database system.

4.12.2 Vendor Payment

All vendor payments are expended on a reimbursement based payment process or as necessary and as contractually allotted, in advance of anticipated expenses. "Reimbursement-based" means that project costs must be incurred by the vendor and documented as required by the terms of the vendor agreement for payment of invoices as per the payment terms in the contract. The vendor submits a Request for Payment form. GOSR reviews and approves the request for payment. Prior to receiving payment, a review of all required reporting must be completed. Payment requests are processed and documented through the Elation database system.

4.12.3 Final Payment

Prior to final payment to a Subrecipient, the MCD confirms all necessary compliance reporting on Elation is complete.

4.13 RBD Project Closeout

Project closeout is the process by which GOSR determines that requirements of the subrecipient agreements or vendor contracts between GOSR and the subrecipients or vendors involved with the RBD project (or component parts of the larger RBD project) have been completed in accordance with the terms and conditions of the agreement or contract. Project closeout process may begin when:

1. All RBD project expenses to be paid with CDBG-DR funds have been completed
2. Approved RBD related work has been finished
3. Any other responsibilities detailed in the vendor/subrecipient agreement related to RBD have been fulfilled (including implementation case study and lessons learned documentation)
4. All monitoring or audit finding related to RBD projects have been cleared.

Because of the time frame and unique design of the RBD projects, RBD project closeout policies are still being developed and will be updated in further versions of this manual.

4.14 Feasibility and Effectiveness of RBD Projects

One of the primary goals of the RBD projects is to develop and implement projects which will make communities more physically, economically, and socially resilient in the face of climate change and volatile storm events. Living Breakwaters has developed modeling and analysis of the storm surge and potential flooding; and anticipated responses to mitigation measures to confirm the Project's feasibility and effectiveness in providing protection against current and future threats and hazards, including future risks associated with climate change.

5.0 Rebuild by Design Procedures

For RBD LB, a vendor has been selected for design of the breakwaters and a construction management firm and construction contractor will be procured to oversee and complete construction of the breakwater. RBD LB is also working with two subrecipients to complete components that support the overall implementation of the LB project.

5.1 Subrecipient Requirements

GOSR staff will discuss roles and responsibilities of all parties that will be involved in the implementation of the project and will inform GOSR subrecipients and vendors to communicate CDBG-DR and GOSR requirements including as applicable, but not limited to the following:

- Subrecipient systems;
- Subrecipient Agreement(s);

- Financial management;
- Procurement;
- Citizen Participation Plan;
- Residential anti-displacement;
- Section 504 conducted by Monitoring and Compliance;
- Fair Housing;
- Equal Employment Opportunity;
- Section 3;
- M/WBE;
- Labor compliance, including Davis-Bacon;
- Recordkeeping;
- Ongoing Maintenance and monitoring of the project;
- Complete quarterly progress reports;
- Annual A-133 Audits during the duration of the grant, if applicable or memo confirming the entity is not subject to the requirement;
- In the case of subrecipient-led construction and design projects, the subrecipient must provide updates in the form of budgets, schedules, and other records as requested GOSR;
- Subrecipient response supporting documents and deliverables either in real time or accompanying subrecipient's requests for reimbursement;
- Subrecipient responsibility for ensuring that their contractors complete all required GOSR reporting;
- Subrecipient receive and respond to all questions or comments from citizens in accordance with the Citizen Participation Plan;
- Subrecipient must agree to operate and maintain in accordance with their Operation and Maintenance Plan for 5 years after construction;
- Subrecipient must comply with all other requirements contained in their respective Subrecipient Agreement

If GOSR determines that a potential subrecipient does not have the capacity to directly carry out a project, GOSR may provide enhanced oversight and project delivery funds to the subrecipient, or it may work with stakeholders to identify another entity to act as the subrecipient for the project if applicable or implement through GOSR.

5.2 Subrecipient Agreement (SRA), Memorandum of Understanding (MOU), and Amendments

Once the subrecipient has been selected, the project team begin to work with the subrecipient's staff to execute a SRA or MOU. The SRA or MOU serves as the mechanism to transfer funds and/or responsibilities to the subrecipient and describes the required compliance with all federal, State and local laws.

All State entities that are subrecipients under the project will enter into an MOU with GOSR. All non-State entities will enter into an SRA. The SRA or MOU may contain a description of the project, budget allocated for the project, and in instances where GOSR is contributing to a portion

of the project's overall budget, the specific portion that GOSR will be funding is to be included. SRA or MOU will be drafted and processed by GOSR Legal. Upon approval, the SRA or MOU will be entered into the New York State Elation ("Elation") system. Should a project component being received or handled by a subrecipient have a substantial change in the project's scope and/or budget, the change will be approved by an authorized GOSR legal authority and the SRA or MOU will be updated in coordination with GOSR Legal.

As a permit condition, and per HUD requirements, NYSDEC signed a MOU for the long term operation, maintenance, and monitoring of Living Breakwaters.

SRA and MOU Amendments:

SRAs and MOUs are amended throughout the project lifecycle to update the amount of project funds, project schedule, deliverables, and to modify the agreement terms if needed. All SRAs/MOUs and SRA/MOU amendments must have an approval memo signed off by GOSR (Program, Legal, and Finance) and HTFC before an SRA/MOU or SRA/MOU amendment can be executed.

5.3 Environmental Review Procedures

An Environmental Review Record (ERR) is developed to document the project's impact(s) on the environment. For RBD, GOSR will be the responsible entity for the entire RBD project's approval. Various agencies and entities are contacted to solicit their comments on the environmental impact of the project. 24 CFR Part 58 prohibits subrecipients from committing or spending CDBG-DR funds until GOSR has completed the environmental review process.

In general, environmental review of projects will consist of the following steps:

- Program provides BERA with a project description for review. Project descriptions must be detailed enough so that the scope of the project and its potential environmental impacts are clear. Generally, construction projects with 5% to 30% design have sufficient details to conduct an environmental review. Subrecipient applications may be approved before environmental review is complete, however, a subrecipient will not receive contract consent from GOSR to enter into a construction contract until environmental clearance has been issued.
- BERA reviews the project description and categorizes the action with regard to the appropriate level of environmental scrutiny that must be applied.
- With regard to NEPA, BERA will determine whether projects are Exempt from environmental review, Categorically Excluded Subject To (Cat Ex A), Categorically Exempt Not Subject To (Cat Ex B), or require an Environmental Assessment. Certain large projects may proceed immediately to the preparation of an Environmental Impact Statement (EIS)

- With regard to SEQRA, BERA determines whether Program projects are Type I, Type II, or Unlisted.
- BERA issues a general exemption for qualified activities associated with project development that are required to generate project information necessary for environmental reviews, project feasibility assessments, and the creation of funding applications.
- BERA conducts the appropriate environmental analysis and prepares compliance documentation in support of each project, except for qualified exempt activities that fall under the general exemption for project development, in accordance with HUD's NEPA regulations and SEQRA.
- Upon completion of the environmental review of an action that is Categorically Excluded but subject to 24 CFR 58.5 (Cat Ex A) or that requires an Environmental Assessment or EIS, BERA submits a Request for the Release of Funds (RROF) to HUD.
- HUD reviews and approves or denies the RROF. If approved, HUD will issue an Authority to Use Grant Funds authorizing the commitment of HUD funds to a particular project.

If the scope of the RBD project changes, a new environmental review may need to be completed. Further information concerning the environmental review process is set forth in the BERA Policy Manual.

5.4 Procurement

While implementing the RBD Program, both GOSR and Subrecipients may procure design/professional service vendors and construction vendors as needed to implement the project. Procurements are completed in accordance with this section.

When subrecipients procure a vendor, they must comply with CDBG-DR procurement guidelines (2 CFR 200.317-326). In addition, all procurements must include GOSR's Exhibit E requirements, which address HUD, State and Federal compliance requirements for CDBG-DR funded projects. Subrecipient advertises for projects bids in accordance with subrecipient's policies and procedures, State and local laws, and in accordance with GOSR requirements for the project. If needed, the project team will provide technical assistance and review.

5.4.1 Subrecipient Procurement of Professional Services

Generally, subrecipients must advertise for competitive bids for contracts for public works in excess of \$35,000. Professional services may be awarded to responsive and responsible bidders that have complied with the specifications outlined in the advertisement based on the lowest price, or based on best value. The procurement must clearly outline the basis of evaluation and award. In some cases, bids received and proposed for award will exceed the amount of funds allocated for the project. When this happens, subrecipients must contact program staff to determine the best option to proceed.

5.4.2 Subrecipient Procurement of Construction Services

Generally, subrecipients must advertise for competitive bids for contracts for public works in excess of \$35,000. The contract should be awarded to the lowest priced responsive and responsible bidder that has complied with the specifications. In some cases, the lowest bid received will exceed

the amount of funds allocated for the project. When this happens, subrecipients must contact Program staff to determine the best option to proceed.

Construction contracts may not be signed and capital projects may not proceed to construction until Authority to Use Grant Funds has been obtained from HUD. GOSR will provide permissions prior to advertisement and award to ensure compliance with this requirement. Upon completion of construction bidding, subrecipients enter the preconstruction phase, which focuses on the subrecipients' understanding of CDBG-DR compliance.

5.4.3 GOSR Procurement

GOSR procurement of professional services or construction vendors follows the policies and procedures in the GOSR Procurement Policy manual, available at www.stormrecovery.ny.gov.

To support the process outlined in the GOSR Procurement Policy Manual, the Living Breakwaters project team will prepare the bid package for review by GOSR Procurement and GOSR Legal.

The bid package will include the following items:

1. Notice to Bidders
2. Instruction to Bidders
3. Bid Forms
4. Agreement Form
5. GOSR General Conditions with Exhibit E requirements
 - a. Required Federal Provisions
 - b. Required State Provisions
 - c. Required HUD Provisions
 - d. Insurance
 - e. Reporting
6. MWBE Requirements
7. Federal Labor Standards Provision
8. Guidelines for § 139-J of the State Finance Law
9. Various State and Federal Forms (and references to all required forms)
10. Prevailing Wages Rates, if applicable
11. Signage, if applicable
12. Final Approved Drawings, if applicable
13. Final Approved Specifications, if applicable
14. All studies and reports, if applicable

Upon award of the contract, the Project Team will oversee the vendor's work for the duration of the contract.

HUD allowed New York State the ability to engage in a non-competitive, single source procurement for the "design teams (or members of the design teams) that participated in the development of selected RBD proposals through the HUD-sponsored RBD competition."

Therefore, the State entered into a contract with SCAPE, the winning RBD design team who submitted the Living Breakwaters proposal to assist in the project from the pre-planning and environmental review phases through construction, in accordance with GOSR Procurement

policies. The State ensured that all costs were necessary and reasonable. Additionally, GOSR will ensure that the winning design teams were in good standing with the State of New York.

5.4.4 Contract Amendments and Micro/Small Purchase Procedures

Contracts may exist in the form of SRA's and MOU's between GOSR and a subrecipient; contracts, task orders, and work orders between GOSR and a vendor; and contracts between a subrecipient and a vendor. Contract amendments will be documented and approved as applicable, depending on one of the following scenarios:

1. Subrecipient-led construction: Subrecipient shall provide GOSR notice and documentation for all contract amendments that pertain to the Project. If the proposed amendment exceeds the budget or changes the project's scope, the subrecipient will request approval from the project team prior to execution. Should a contract amendment require the amendment of an SRA or MOU, those changes will be made in accordance with this manual.
2. GOSR held contracts: GOSR will review and approve.

Subrecipient Micro and Small Purchase Procurements

Subrecipients completing RBD projects may need to procure goods or other types of professional services in order to implement a project or public service program. Below is an explanation of what qualifies as a micro or small purchase and the procedures for completing these types of procurements.

Micro-purchases

Micro-purchases are applicable to the procurement of supplies or services that do not exceed \$3,500 in total, except for contracts subject to the Davis-Bacon Act, where the threshold is \$2,000. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. While not required under 2 CFR 200, if the subrecipient is uncertain about the eligibility of the micro-purchase, the subrecipient should reach out to the Program to request pre-approval.

Once the subrecipient has completed a micro-purchase, it must document that the price is fair and reasonable. This documentation must also be included in the subrecipient's **Request for Payment**.

A subrecipient must not split a larger procurement merely to lower the cost of a procurement to less than the micro-purchase threshold in order to take advantage of the streamlined procurement process associated with this method.

Small Purchases

Small purchases are applicable to the procurement of services or supplies that do not exceed the federal Simplified Acquisition Threshold, currently set at \$150,000 in the aggregate. However, if the subrecipient is subject to other State or municipal procurement guidelines, the strictest threshold should be applied to the procurement. If the procurement is for a construction related activity over \$35,000, the subrecipient must follow the competitive bidding procedure outlined in [this](#) manual . Under no circumstance may costs under a contract or contract amendment procured using small purchase procedures exceed the strictest threshold guiding the procurement. Should costs exceed that threshold, the service would need to be procured again.

Competitive Bids

Any procurement exceeding the applicable small purchase threshold must be completed through a competitive bidding process described in this manual.

Change Orders

All GOSR vendors execute a contract and a task order⁵ at the culmination of procurement and award that outline the scope and funding allotted for the service. In addition, GOSR held vendors may be issued work orders that flow from the task order and serve as the primary document for the vendor's currently authorized scope. Amendments to the work order may be facilitated and approved through the change order process.

The change order process is initiated when either GOSR or the vendor proposes an amendment to the contract duration, terms, scope, or budget. In either case, a change order proposal will be submitted by the vendor to the Project Team for review and approval. If the vendor is a construction contractor, change order proposals are also reviewed and approved by the A/E Firm, when applicable and pertaining to its professional capacity as the architect of record. After receipt of the vendor's proposal the project Team will prepare a formal change order and record of negotiation and obtain approval from the Program, or their designee. Upon approval the change order is transmitted to the vendor for counter signature. Fully executed change orders and records of negotiation are maintained by the Program and stored in the program database.

In the event an approved change order would result in the work order exceeding the currently authorized scope or budget in the vendor's contract or task order, the project team will work with GOSR Legal to draft a proposed amendment to the vendor's task order, or task order and contract, as appropriate, and submit to GOSR Legal and GOSR Finance for review. Contract and task order amendments are reviewed and approved by GOSR Legal, GOSR Finance, and GOSR Executive Leadership. Upon approval Elation is updated to reflect the new vendor balances. The project team maintains copies of vendors task orders, and amendments in the program database(s).

⁵ GOSR Vendors are issued contracts approved by HTFC that is the highest-level contractual vehicle. GOSR also issues Task Orders that flow down from the contract and identify project specific scope and authorized not to exceed budget.

In the event a Vendor is not issued a work order due to the nature of the service being provided, the task order is the primary document for the vendor's scope and can be amended as discussed in the paragraph above.

Contract amendments to GOSR-procured professional service contracts follow the policies and procedures laid out in the GOSR Procurement Policy manual.

5.4.5 Subrecipient-led Construction

The coordination of construction will include technical assistance for subrecipients as necessary by the project team to confirm compliance with applicable CDBG-DR regulations, and the overall project goals; including but not limited to:

- Labor standards
- Section 3
- EEO
- Financial management

In addition, if GOSR completed the project design, the subrecipient's construction vendor will transmit project submittals, RFI's, and change orders to the GOSR held A/E firm for review and approval. The Project Team will oversee the GOSR held A/E Firm providing design services during construction to monitor for timely review, response, and approval of contractor submittals and RFI's. The Project Team will provide technical assistance to the subrecipient as needed in all aspects of construction, including assistance in complying with GOSR Finance requirements for form, format, and substance of requests for payment.

Generally, subrecipients must advertise for competitive bids for contracts for public works in excess of \$35,000. The contract should be awarded to the lowest priced responsible bidder that has complied with the specifications. In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, subrecipients must contact project staff to determine the best option to proceed.

Subrecipients may advertise after receiving an email from GOSR allowing them to do so. This email is sent after:

- GOSR review of plans and specifications
- Environmental clearance of proposed construction activities
- Verification that all necessary lands, rights-of-way, and easements have been acquired
- Verification that all other program requirements have been met.

Upon completion of bidding, subrecipients enter the preconstruction phase, which focuses on the subrecipients' understanding of CDBG-DR compliance. Capital projects may not proceed to construction until environmental review is complete, if subrecipient-led, GOSR has approved the project, and GOSR has consented to the construction contract.

5.5 Project Implementation: Design and Construction

5.5.1 Subrecipient-led Design

In subrecipient-led design projects, subrecipient will provide information to BERA to facilitate the completion of the environmental review, including design and technical specifications. Should substantial revisions be made after the completion of the environmental review, the subrecipient shall notify both BERA and the program team. Prior to or at the time of a request for payment, the subrecipient will submit complete design and technical records to GOSR. Prior to procurement for construction services, the project team will review final design and technical specifications to confirm consistency with the project's overall requirements and goals. Payment will only be issued for expenses that comply with the approved drawings and specifications and comply with the approved environmental assessment, Action Plan and project goals. Design expenses that do not comply with BERA and project goals are not eligible for payment. Throughout the course of design, the Project Team will meet regularly to review progress, collect updated budgets and schedules, and provide technical assistance as needed.

5.5.2 Subrecipient Preconstruction

In the preconstruction phase, subrecipients, their contractors, and the project team may meet to discuss CDBG-DR requirements including:

- Section 3/EEO reporting
- Labor standards
- Payroll reporting
- Project signs
- Payment procedures
- Inspection reports by project A/E and/or construction manager
- Change orders.

In addition, the contractor shall prepare mobilization, health and safety and site logistical plans in accordance with procurement and contract requirements. If GOSR completed the project design, the Project Team will oversee the A/E Firm and ensure timely review, response, and approval of contractor submittals and RFI's.

5.5.3 Subrecipient-led Construction Phase

The coordination of construction of the various components of the project will include any necessary TA for subrecipients by the Program to confirm compliance with applicable CDBG-DR regulations, and the overall project goals; including but not limited to:

- Labor standards
- Section 3
- EEO
- Financial management

In addition, if GOSR completed the project design, the subrecipient's construction vendor will transmit project submittals, RFI's, and change orders to the GOSR held A/E firm for review and approval. The Project Team will oversee the GOSR held A/E Firm providing design services during construction to monitor for timely review, response, and approval of contractor submittals

and RFI's. The Program will provide technical assistance to the subrecipient as needed in all aspects of construction, including assistance in complying with GOSR Finance requirements for form, format, and substance of requests for payment.

5.5.4 GOSR Led Design Phase

In GOSR led design, the Project Team will oversee the GOSR held A/E Firm responsible for the design of the project. During the design phase the Project Team will meet with the vendor regularly to review progress. The Project Team will coordinate with the design vendor and BERA to share designs and comply with the environmental requirements of the project. After a significant design revision or milestone, the Project Team will meet with the subrecipient to review and obtain approval for the latest design iteration. GOSR will obtain design approval from the subrecipients in instances where it is overseeing design of the project. In instances where GOSR is constructing the project, GOSR will obtain subrecipient design approval before beginning procurement of a construction contractor. GOSR will coordinate with the subrecipient regarding responsibility for all permits, and if necessary or beneficial to the project, will obtain permits on the subrecipients behalf through the A/E Firm. The subrecipient, or the subrecipient's vendor, are responsible for obtaining all permits not acquired by GOSR.

5.5.5 GOSR Led Construction Phase

In GOSR led construction, upon completion of procurement and contract award, the Project Team will oversee the construction vendor through the course of construction in collaboration with the A/E Firm. The construction vendor is required to provide all project submittals and RFI's in writing to the A/E Firm and the Project Team for approval and coordinate with the Project Team regarding interactions with the subrecipient and advancement of the project. In addition, the Project Team will oversee the A/E Firm providing design services during construction to monitor for timely review, response, and approval of contractor submittals and RFI's. The Project Team will coordinate with the subrecipient in advance of mobilization to plan for site logistics and schedule of activities and meet regularly throughout construction to advance the project. The Project Team will hold regular meetings with the A/E Firm and construction vendor during the entire course of the project. Upon completion of construction the Project Team and A/E Firm will confirm all contractually required items have been completed and coordinate with the subrecipient for final review and approval.

5.6 Contract Amendments

Contracts may exist in the form of SRA's and MOU's between GOSR and a subrecipient; contracts, task orders, and work orders between GOSR and a vendor; and contracts between a subrecipient and a vendor. Contract amendments will be documented and approved depending on one of the following scenarios:

1. Subrecipient-led design and construction: Subrecipient shall provide GOSR notice and documentation for all contract amendments that pertain to the Project. If the proposed amendment exceeds the budget or changes the project's scope, the subrecipient will request approval from the project team prior to execution. Should a contract amendment require the amendment of an SRA or MOU, those changes will be made in accordance with this manual (SRA, MOU, and PMA).

2. GOSR-led design, subrecipient led construction: Subrecipient will provide GOSR notice and documentation for all contract amendments. If the amendment is for a construction contract, the subrecipient will not amend the contract without written approval of the change by the GOSR held A/E firm. The A/E firm will receive authorization from the Program prior to approving any contract amendments.
3. GOSR held contracts: GOSR will review and approve.

5.6.1 Subrecipient Change Order

When an unforeseen task or expense arises during construction or design, the contractor may request a change order to amend the scope of work in their contract and provide additional funding and/or time to cover it. Change order requests are used to document and approve changes in the project. For Subrecipient led construction, Subrecipient shall provide GOSR notice and documentation for all change orders. If the change order exceeds the budget or changes the project's scope, the subrecipient will request approval from the project team prior to execution. Should a change order require the amendment of an SRA or MOU, those changes will be made in accordance with this manual (SRA, MOU, and PMA). The Project Team will maintain records of all contract amendments on the Program database and update Elation records upon completion.

5.6.2 GOSR Contract Amendments

All GOSR vendors execute a contract and a task order⁶ at the culmination of procurement and award that outline the scope and funding allotted for the service. In addition, GOSR held vendors may be issued work orders that flow from the task order and serve as the primary document for the vendor's currently authorized scope. Amendments to the work order may be facilitated and approved through the change order process.

The change order process is initiated when either GOSR or the vendor proposes an amendment to the contract duration, terms, scope, or budget. In either case, a change order proposal will be submitted by the vendor to the Program for review and approval. If the vendor is a construction contractor, change order proposals are also reviewed and approved by the A/E Firm, when applicable and pertaining to its professional capacity as the engineer of record. After receipt of the vendor's proposal the Project Team will prepare a formal change order and record of negotiation and obtain approval from the Program authority, or their designee. Upon approval the change order is transmitted to the vendor for counter signature. Fully executed change orders and records of negotiation are maintained by the Program and stored on the program database(s).

In the event an approved change order would result in the work order exceeding the currently authorized scope or budget in the vendor's contract or task order, the project team will work with GOSR Legal to draft a proposed amendment to the vendor's task order, or task order and contract, as appropriate, and submit to GOSR Legal and GOSR Finance for review. Contract and task order amendments are reviewed and approved by GOSR Legal, GOSR Finance, and GOSR Executive Leadership. Upon approval Elation is updated to reflect the new vendor balances. The program maintains copies of vendors task orders, and amendments in the program database(s).

⁶ GOSR Vendors are issued contracts approved by HTFC that is the highest-level contractual vehicle. GOSR also issues Task Orders that flow down from the contract and identify project specific scope and authorized not to exceed budget.

In the event a Vendor is not issued a work order due to the nature of the service being provided, the task order is the primary document for the vendor's scope and can be amended as discussed in the paragraph above.

5.7 Multi-Phase Procedures

5.7.1 Duplication of Benefits and Order of Assistance

GOSR works with the subrecipient and program participants during the application phase to ensure that HUD duplication of benefits requirements are met. Any use of CDBG-DR funds must take into consideration all other funding sources and deduct all funds that could be considered a DOB.

For non-capital projects where there is no engineering/design phase, self-certification questionnaires submitted by subrecipients will be submitted twice: upon submission of the application and at closeout. There is no review of EMMIE, USACE or the MB3 database because non-capital projects are not funded by these sources of funds. For Subrecipient-led capital project components, the Subrecipient, must complete and certify a DOB questionnaire before the execution of a Subrecipient Agreement amendment providing funds for construction, and again at closeout. The Program then verifies the information provided in the DOB questionnaire through the following process:

Staff reviews the **DOB Questionnaire** submitted by the subrecipient and any program participants, and performs the DOB check as described below and documents the results in the application review guide.

The Program team follows the steps below to check for OOA and DOB:

1. Review of FEMA PA.
 - a. The PA Program provides assistance to State, tribal and local governments, and certain types of private nonprofit organizations to help communities quickly respond to and recover from major disasters or emergencies.
 - b. The Program team accesses FEMA PA's EMMIE database and reviews all PWs that have a scope similar to the proposed project. The Policy team's review includes the PWs that have been approved by FEMA, in order to check for DOB compliance.
2. Review of FEMA HMGP.
 - a. HMGP provides grants to States and local governments to implement long-term hazard mitigation measures after a major disaster declaration.
 - b. The amount of funding available for the Hazard Mitigation Grant Program (HMGP) under a particular disaster declaration is limited. GOSR receives periodic updates from DHSES on projects receiving HMGP funding for Sandy, Irene, Lee, and other relevant storms. The Program team reviews the database of HMGP-funded projects to confirm that there is no DOB resulting from HMGP funding.
3. Review of US Army Corp of Engineers (USACE)⁷.
 - a. USACE works with Federal, State and local partners to reduce risk to lives, property and the environment, and to strengthen coastal community resilience.
 - b. The amount of funding available for USACE Sandy recovery projects is limited.

GOSR receives periodic updates from DEC on projects receiving USACE Sandy recovery funding. The Program team reviews the database of USACE recovery projects to confirm that there is no DOB resulting from USACE funding

For the GOSR-implemented components, a memo confirms the available sources of funding for the component and confirms whether there are any duplication of benefits. An additional DOB memo for the GOSR-led construction components will be completed at project closeout to confirm the information included in the original DOB memo, or document any changes.

Projects developed and/or funded by GOSR through the Living Breakwaters Program are reviewed for applicability and eligibility against other Federal disaster recovery programs managed by FEMA and U.S. Army Corps of Engineers (USACE) to determine whether Order of Assistance issues exist. This analysis is documented in the Program's **Order of Assistance memo**.

If DOB or an OOA issue is found, the project team will work with the Executive Director, policy team and subrecipient, if applicable, to amend the subrecipient's award and subrecipient's agreement, or GOSR's project budget as needed. If DOB or OOA is found after final payment, please see the Recapture Section.

5.7.2 DRGR Set-up and QPR Reporting

During the project set-up process, the project team works with the Research and Strategic Analysis Group (RSA) to set up Activity Codes in HUD's Disaster Recovery Grant Reporting (DRGR) system. All projects must reside in DRGR in order for the Program to conduct Quarterly Performance Reporting

1. Once a project has been approved, the project team coordinates with the **Program** to identify the Subrecipient, project name and proposed funding amount, and requests that an Activity Code be created for each project.
2. The Activity Codes are created and entered into HUD's Disaster Recovery Grant Reporting (DRGR) system, concluding the DRGR set-up process.
3. The Program conducts Quarterly Progress Reports for project activities.

The State must submit a Quarterly Performance Report through HUD's Disaster Recovery Grant Reporting (DRGR) system no later than thirty days following the end of each calendar quarter. Within three days of submission to HUD, each QPR must be posted on GOSR's official website. The State's first QPR is due after the first full calendar quarter after the grant award. QPR's will be posted on a quarterly basis until all funds have been expended and all expenditures have been reported.

Each QPR includes information about the uses of funds for the project as entered in the DRGR reporting system. This includes, but is not limited to: project name, activity, location, and National Objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; and beginning and actual completion dates of completed activities; achieved performance outcomes and beneficiary data. The State must also record the amount of funding expended for each Contractor identified in the

Action Plan. Efforts made by the State to affirmatively further fair housing are included in the QPR.

1. The program pulls the data from Elation each quarter reflecting the previous quarter draws and sends it to the project team for narrative completion.
2. The **Program** completes a Narrative for each project outlining activities corresponding to the draws from the previous quarter, which consists of a high-level overview of the applicant's progress. The **Program** utilizes the data provided in Elation to complete this summary.
3. Once the data and Narrative is completed, **Program** completes the Quarterly Performance Report (QPR) in line with the above requirements.

5.7.3 Subrecipient Requirements

GOSR staff will discuss roles and responsibilities of all parties that will be involved in the implementation of the project and will inform GOSR subrecipients and vendors to communicate CDBG-DR and GOSR requirements including but not limited to the following:

- Subrecipient systems;
- Subrecipient Agreement(s);
- Financial management;
- Procurement;
- Citizen Participation Plan;
- Residential anti-displacement;
- Section 504 conducted by Monitoring and Compliance;
- Fair Housing;
- Equal Employment Opportunity;
- Section 3;
- M/WBE;
- Labor compliance, including Davis-Bacon;
- Recordkeeping;
- Ongoing Maintenance and monitoring of the project;
- Complete quarterly progress reports;
- Annual A-133 Audits during the duration of the grant, if applicable or memo confirming the entity is not subject to the requirement;
- In the case of subrecipient-led construction and design projects, the subrecipient must provide updates in the form of budgets, schedules, and other records as requested GOSR;
- Subrecipient response supporting documents and deliverables either in real time or accompanying subrecipient's requests for reimbursement;
- Subrecipient responsibility for ensuring that their contractors complete all required GOSR reporting;
- Subrecipient receive and respond to all questions or comments from citizens in accordance with the Citizen Participation Plan;
- As applicable, subrecipient must agree to operate and maintain aspects of the project in accordance with their subrecipient agreement;

- Subrecipient must comply with all other requirements contained in their respective Subrecipient Agreement

If GOSR determines that a potential subrecipient does not have the capacity to directly carryout a project (or component of the project), GOSR may provide enhanced oversight and project delivery funds to the subrecipient, or it may work with stakeholders to identify another entity to act as the subrecipient for the project if applicable or implement through GOSR.

5.7.4 Subrecipient and Subrecipient Contractor Reporting

Subrecipients and subrecipient contractors must complete required reporting outlined in the subrecipient's SRA or MOU and flowed down to the contractor through GOSR's Exhibit E requirements included in the procurement. These requirements are monitored by GOSR Monitoring and Compliance and reported by subrecipients and contractors in Elation. This reporting includes:

- M/WBE Utilization Plan;
- Section 3 Utilization Plan;
- SDVOB Utilization Plan;
- Vendor Responsibility Questionnaire;
- Affirmation of Understanding of Section 139-J of the State Finance Law;
- PROC-1 – EEO Staffing Plan;
- PROC-2 – MWBE
- PROC-4 – Policy Statement;
- PROC-8 – EEOC Statement;
- HUD 60002;
- ADM-123 Form;
- ADM-136 Form;
- ADM-146 Form; and
- All State, Federal and HUD requirements as outlined in Exhibit E

Subrecipients additionally submit **Subrecipient Quarterly Progress Reports** which document project status, work carried out during the preceding quarter, information of revenue generated by the project (used for Program Income compliance) and technical assistance and other requests.

5.8 Payment

5.8.1 Subrecipient Payment

Subrecipient requests for payment are reviewed and approved by GOSR on a cost incurred payment basis or in advance, as applicable by the terms of the subrecipient agreement. The subrecipient submits a request for payment through Elation, along with supporting documentation and deliverables. The request for payment must be submitted in the form and format required by GOSR Finance. Upon receipt, GOSR will review to determine all required documentation and deliverables have been submitted, the request for payment is within the current authorized SRA or

MOU, there are no quantitative or format errors in the payment request and will approve or reject the request for payment as appropriate.

Regarding payments for design, GOSR may make payments to the subrecipient based on progress with supporting documentation and deliverables. Progress invoicing is allowed on a monthly basis. In the request for payment, the subrecipient will include a letter outlining services provided during the invoice period, a certification by the subrecipient that the request is true and accurate, and supporting deliverables that support the amount requested. Prior to final payment all final deliverables must be provided.

Regarding payments for construction, GOSR typically utilizes standard AIA format and requisitions received from the construction contractor and approved by the subrecipient and A/E Firm can be transferred into GOSR payment request format for submission to GOSR through Elation. Payment requests for construction must also include a letter describing activities performed and a subrecipient certification, as applicable. Payment requests can be submitted on a monthly basis by contractor.

Regarding payments for project delivery, if the subrecipient will be utilizing its staff for project delivery, they will need to log their hours and activities for the duration of the project and GOSR will provide training and support to the subrecipient regarding how to package this for payment. If a third-party contractor is procured to provide these services, required back up documentation will be similar to the design vendors with a letter describing services performed and supporting deliverables based on the content of the letter and the vendor's scope.

Upon receipt of a subrecipient's request for payment, the project Team will provide first level qualitative review of the invoice to confirm sufficient supporting deliverables have been provided and either approve or provide comments for corrections. Specifically, the goal is to confirm that all required deliverables have been received for each payment request submittal. All deliverables that are too large to submit in Elation will be obtained by the project Team and stored on the program database. Once approved, GOSR Finance will conduct a quantitative review for form and format of the invoice and will either approve or provide feedback for corrections. Once approved by GOSR Finance, the request for reimbursement will be routed through Elation for final approval and payment.

5.8.2 GOSR Vendor Payment

All vendor payments are expended on a cost incurred payment process. "Cost Incurred" means that project costs must be incurred by the vendor and documented as required by the terms of the vendor agreement for payment of invoices. The vendor submits a Request for Payment through the Elation system in the form/format required by GOSR Finance, along with supporting documentation and deliverables. Upon receipt, the Project Team will provide first level qualitative review of the invoice to confirm sufficient supporting deliverables have been provided and either approve or provide comments for corrections. Specifically, the goal is to confirm that all required deliverables have been received for each payment request submittal. All deliverables that are too large to submit in Elation will be obtained by the Project Team and stored on the Program database. Once approved, GOSR Finance will conduct a quantitative review for form and format of the invoice and will either approve or provide feedback for corrections. Once approved by GOSR

Finance, the request for reimbursement will be routed through Elation for final approval and payment.

5.8.3 Final Payment

Prior to final payment to a Subrecipient, the MCD confirms all necessary compliance reporting on Elation is complete.

For contractors, final payment will be approved by GOSR after review and approval that the contractor and subcontractors reporting requirements are completed and all deliverables and documentation required by the contract or subrecipient agreement are provided.

5.9 Recapture

In instances where full information is not available prior to making a final award, GOSR established a Uniform Recapture Policy to account for newly available data. The primary responsibility for compliance with the Stafford Act rests with GOSR staff. To confirm compliance, GOSR verifies information using available and accessible third-party data feeds from federal agencies. Data sharing agreements have been developed between GOSR and FEMA, to ensure that it has all the needed data to perform the analyses and calculations of allowable disaster recovery awards. Data matching protocols and software tools are utilized to automate the initial review by cross-comparing reported information with FEMA databases. These data tools are used to verify self-reported information provided by subrecipients and project participants before issuing payments. To ensure accuracy of automated procedures, program is trained on data matching protocols and interface with contractors and partner agencies.

To ensure subrecipients receiving CDBG-DR assistance are using the funds for their intended purpose, GOSR requires all subrecipients to execute an SRA stipulating each party's responsibilities and the potential penalties if the subrecipient is found not to have fulfilled their obligations. Specifically, the agreement requires the subrecipient to return any and all CDBG-DR funds to GOSR which are found to be ineligible, unallowable, unreasonable, a DOB or non-compensable, no matter the cause.

5.10 Resilience Performance Standards

HUD requires, through the November 18, 2013 Federal Register Notice, that GOSR identify and implement resilience performance standards for infrastructure projects. The Program does this through the completion of a **Resilience Performance Standards for Infrastructure Projects Review** memo.

5.11 RBD Closeout Procedures

Closeout is undertaken by the GOSR project team once the final project closeout requirements are completed as substantiated by the contract or subrecipient agreement.

The project closeout is the process by which GOSR determines all requirements of the agreement between GOSR and the subrecipient and/or vendor for a specific project have been completed in accordance with the terms and conditions of the agreement. Project closeout begins when:

- All project expenses (including non-CDBG-DR funds) to be paid have been completed;
- Approved work has been finished;
- Any other responsibilities detailed in the partner agreement have been fulfilled; and

- All monitoring or audit findings have been cleared. Project closeout consists of:
- A closeout request, with applicable project documents attached, submitted to GOSR by the subrecipient and/or vendor;
- A project closeout checklist completed and approved by the Program and other departments within GOSR; and
- A project closeout letter sent to the partner and to GOSR departments.

In addition, the project's status must be updated in HUD's Disaster Recovery Grant Reporting (DRGR) system, and a final HUD quarterly narrative report must be submitted to reflect the project's status. For projects comprised of GOSR's CDBG-DR funds as well as other funds, project closeout occurs when all funds are spent.

Exhibit 1 – Program Administrative Requirements and Cross-Cutting Federal Regulations

GOSR and its developers/subrecipients must adhere to all applicable State and federal laws, rules, and regulations. This section provides a summary of the significant and applicable federal regulations.

Americans with Disabilities Act (ADA) and Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in federally assisted Programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of a telecommunications device for the deaf (TDD)/telephone relay services.⁸ GOSR takes affirmative steps to ensure that people with disabilities have equal access to the programs offered by GOSR, and that any aid, benefit or services are delivered in the most integrated manner possible. Qualified persons with disabilities are informed of the availability of programs, services and activities, and GOSR's programs, activities or services are readily accessible to, and usable by, individuals with disabilities. GOSR also ensures that reasonable accommodations or changes to policies, practices, or procedures are made to guarantee people with disabilities equal access to services and programs. Additionally, all programs, services and activities are accessible, both structurally and administratively, to persons with disabilities. GOSR's mandate to conform to the requirements of ADA flows down to all subrecipients, vendors and developers.

Section 504 requires that, for all new construction of multifamily rental projects with 5 or more units and/or substantial alterations of multifamily rental projects with 15 or more units, a minimum of 5 percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional 2 percent of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments). In buildings with 5 or more dwelling units and at least one elevator, all dwelling units and all public/common use areas are subject to Section 504 requirements. In buildings with 5 or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to Section 504 requirements. In addition, Section 504 requires that federally funded new construction of non-housing facilities be designed and constructed to be readily accessible and usable by individuals with handicaps, and that federally funded alterations to existing non-housing facilities do so to the maximum extent feasible.

⁸ http://www.ada.gov/2010_regs.htm

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS).

Davis-Bacon Act and Related Acts (DBRA)

The [Davis-Bacon Act⁹ and Related Acts \(DBRA\)](#) requires all subrecipients, contractors and subcontractors funded in whole or in part with CDBG-DR financial assistance through GOSR for the construction, alteration, or repair of public buildings or public works valued at more than \$2,000, except residential properties with less than 8 units, to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. However, Davis-Bacon requirements do not apply to force account labor. Davis-Bacon “labor standards clauses” must be included in covered contracts. In some cases, New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two prevails. Exceptions to DBRA include:

- Construction contracts of \$2,000 or less;
- Real property acquisition;
- Architectural and engineering fees;
- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and
- Demolition and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Subrecipients must work with GOSR to obtain both federal and New York State prevailing wage decisions for each project. After the bids are received, GOSR will verify the eligibility of the contractor to participate in the program.

Additionally, GOSR must follow the reporting requirements per HUD and Department of Labor (DOL) regulations. This requirement also extends to GOSR subrecipients and contractors.

The Wage Compliance Unit within the MCD ensures that GOSR’s applicable programs and services are in compliance with DBRA through the submission of weekly payrolls, site visits, and interviews with laborers.

New York State Prevailing Wages

In addition to DBRA applicability on GOSR construction projects, New York State prevailing wages may be applicable. Under New York State Labor Law ¹⁰, contractors and subcontractors

⁹ 40 U.S.C. 3141 *et seq.*

¹⁰ Article 8 New York State Labor Law Section 220

must pay the prevailing rate of wage and supplements (fringe benefits) to all workers under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. Prevailing wage is the pay rate set by law for work on public work projects. This applies to all laborers, workers or mechanics employed under a public work contract.

Contract Work Hours & Safety Standards Act

The Contract Work Hours and Safety Standards Act ¹¹(CWHSSA) applies to Federally financed (in whole or in part) contracts over \$100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40 hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages and for liquidated damages computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

The Copeland "Anti-Kickback" Act

The Copeland Anti-Kickback Act¹² makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by Federal loans or grants, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports by all contractors and subcontractors.

Equal Employment Opportunity (EEO)

[Executive Order 11246](#), Equal Employment Opportunity, as amended, prohibits federal contractors and federally assisted construction contractors and subcontractors who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.¹³ This regulation is adhered to within GOSR programs, and covered contractors and subcontractors must submit an EEO policy statement, staffing plan, and quarterly reports to document compliance.

Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their race, color, religion, familial status, national origin, sex, or disability. The Fair Housing Act contains requirements for the design of multifamily dwellings containing four or more attached units ready for first occupancy after March 13, 1991 to ensure accessibility to handicapped persons. Additionally, subrecipients, and/or developers funded in whole or in part by GOSR must

¹¹ 40 U.S.C. Section 327 et seq.

¹² 18 U.S.C. Section 874 as implemented in 29 Part 3

¹³ 41 CFR Part 60.

also follow the New York State Human Rights Law, which covers all the same characteristics as the Federal Fair Housing Act, but offers additional protections based upon age, sexual orientation, marital status, and military status.

GOSR enforces the Fair Housing Act by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements and provide a marketing plan and report on compliance in accordance with the Fair Housing Act and the associated forms on HCR's website, where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant will affirmatively further fair housing throughout applicable GOSR disaster recovery programs. Additionally, GOSR and its Subrecipients maintain and report data on activity beneficiaries' and applicants' demographics for Fair Housing purposes, including race, ethnicity and head of household gender for direct-benefit activities' applicants and beneficiaries.

Fair Labor Standards Act of 1938, as Amended (FLSA)

The [Fair Labor Standards Act of 1938](#)¹⁴, as amended (FLSA) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week for non-exempt workers.¹⁵ These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

Limited English Proficiency (LEP)

[Federal Executive Order 13166](#)¹ requires GOSR and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with LEP. GOSR ensures fair access through the implementation of a Language Assistance Plan (LAP) which includes non-English based outreach, translation of vital documents, free language assistance services, and staff training. GOSR's LEP Coordinator is responsible for coordinating all activities associated with the LAP, and the DCR monitors its implementation.

Minority and/or Women-Owned Business Enterprises (MWBE)

The Federal [Executive Order 12432](#) guidelines require selected federal agencies to promote and increase the utilization of Minority Business Enterprises (MBEs). 2 CFR 200.321 requires the non-federal entity to take all necessary steps to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with certain federal funds, including CDBG-DR, ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

New York State is a national leader in requiring that public entities utilize MBE and WBE firms. Per state goals identified by the administration, for projects and agreements executed prior to

¹⁴ 29 U.S.C. 201.

¹⁵ *Id.*

January 30, 2015, GOSR ensures compliance by requiring, as applicable, subrecipients and contractors to make best efforts to achieve an overall M/WBE participation goal of 20% of the entire contract value consisting of 10% for MBE and 10% for WBE.

For all projects and agreements executed after January 30, 2015, GOSR will be required to make best efforts to achieve an overall M/WBE participation goal of 30% of the entire contract, consisting of 15% for MBE and 15% for WBE, per the increase in utilization targets put in place by New York State. GOSR follows the relevant requirements of NYS Executive Law Article 15-A regarding MWBE participation. The DCR verifies M/WBE certification and the MCD monitors to ensure compliance with all reporting requirements. Where applicable, projects financed pursuant to an HCR competitive Request for Proposal (RFP) must comply with the M/WBE participation goals outlined in the RFP.

For all applicable projects, the DCR works with applicants and subrecipients to provide technical assistance (TA), guidance, and one-on-one support required to implement good faith efforts and meet applicable M/WBE thresholds.

Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires grantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-DR funding, to the greatest extent feasible, to extend hiring opportunities and contracts to Section 3 eligible residents and businesses, when a housing construction, housing rehabilitation or other public construction project or activity meets certain thresholds and criteria. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government-assisted housing. GOSR monitors contracts with subrecipients, contractors, subcontractors, and/or developers.

The DCR provides training, TA and one-on-one support for all projects, especially in terms of implementing best efforts to meet Section 3 goals. GOSR also monitors Section 3 goal attainment and provides additional on-the-ground support where required.

Residential Anti-Displacement

All subrecipients and developers must follow GOSR's Residential Anti-Displacement policy.

Uniform Relocation Assistance and Real Property Acquisition Act

CDBG-DR federal funds, administered by GOSR and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act or URA) and/or Section 104(d) of the Housing and Community Development Act of 1974. The applicable federal regulations are located at 49 CFR Part 24 (URA), 24 CFR Part 42 (Section 104(d)), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378).

Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses. The March 5, 2013 Federal Register Notice (FR-5696-N-01) waived the one-for-one replacement requirements at Section 104(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 for units that meet the State’s definition of “not suitable for rehabilitation,” as established in the State’s Action Plan.

Subrecipients or contractors must provide the following to households or entities (businesses, farms and non-profit organizations) that they displace:

- Required relocation notices, including General Information Notice, Notice of Non-displacement (for temporary relocations), and Eligibility Notice;
- Relocation advisory services;
- A minimum of 90-day notice to vacate;
- Reimbursement for moving expenses, and in the case of non-residential displacement, reestablishment expenses; and
- Payments for added cost of renting or purchasing comparable replacement housing for residential displacements.

In cases involving the involuntary acquisition of real property, as defined by 49 CFR 24.101 (b), Subrecipients or contractors must provide the following benefits to the property owner:

- Appraise property before negotiations
- Invite the property owner to accompany the appraiser during the property inspection
- Provide the owner with a written offer of just compensation and a summary of what is being acquired
- Pay for property before possession
- Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.

Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, 42 U.S.C. §5181 (“Stafford Act”) provides that:

“Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act].”¹⁶

GOSR programs subject to the URA and Section 104(d) include the CDBG-DR programs. GOSR policies and procedures, Notices of Funding Availability (NOFAs), applicant certifications and/or

written agreements for funds subject to the URA and Section 104(d) shall refer to Federal and State rules, as appropriate.

Real Property

If CDBG-DR funds are used to acquire real property, where applicable, GOSR ensures that the property is used for its intended (and approved) purpose. If the property is sold under the SRA, the sale proceeds will be treated as Program Income pursuant to Section 3.13.7.

This fairly straightforward proposition about the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector grantee. (The rules are generally more explicit for governmental grantees). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights). (Property Management and Disposition Regulations 24 CFR 570.503; all subrecipients (subs) 24 CFR 85.32; 85.34, govt. subs 24 CFR 84.32; 84.34, nonprofit subs).

The federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for accurate records, the performance of regular inventories, adequate maintenance and control, and proper sales procedures. Grantees must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

Financial Management

Pursuant to Public Law 113-2, GOSR maintains and has in place proficient financial controls. The GOSR Internal Audit Department (IAD) exists to examine and evaluate the adequacy and effectiveness of the organization's governance and risk management. IAD plans and considers controls necessary to mitigate risks associated with program and administrative operations, internal and external reporting, and regulatory compliance. Risks of fraud, waste, and abuse are additionally considered throughout assignments.

MCD and IAD ensure that GOSR, as the grantee, as well as those administering CDBG-DR funds, continuously demonstrate conformity to financial management requirements as required by FR-5696-N-01. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and 2 CFR Part 200, Subpart F. GOSR's financial management system will be consistent with and in compliance with 24 CFR Parts 84, 85, and 570 (as applicable, and as superseded by 2 CFR 200), which ensures that GOSR funds are managed with high levels of accountability and transparency.

GOSR's Financial Management practices adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current, and reviewed periodically; and

4. Audits are conducted in a timely manner and in accordance with applicable standards.

Procurement Policy

GOSR has established and adopted a procurement policy that meets State and federal requirements. The MCD and IAD ensure that GOSR adheres to its established policies.

Record Keeping, Retention, and File Management

In accordance with HUD regulations, GOSR as a grantee and recipient of CDBG-DR funds follow the records retention as cited in 24 CFR 84.53 (as amended by 2 CFR 200.333), which includes financial records, supporting documents, statistical records, and all other pertinent records. GOSR must maintain records for a period of six years from the time of closeout of HUD's grant to the State. Further, GOSR established record keeping and retention requirements in its partner and contractor agreements in accordance with the guidelines established in 24 CFR 570.503(b)(2). For all partners, their retention of records shall be kept in accordance with 24 CFR 85.42, as modified by 24 CFR 570.502(a)(7), which requires for records to be maintained at least for a period of three years from the time of closeout of HUD's grant to the State or for six years after the closeout of a CDBG-DR funded project, whichever may be longer.

GOSR maintains records in accordance with recordkeeping requirements cited in 24 CFR 570.490(a)(1) (as amended by 2 CFR 200), in order to facilitate a review or audit by HUD. Additionally, every partner and contractor is required to establish and maintain at least three major categories of records: Administrative, Financial, and Project Case files.

Administrative records: These are files and records that apply to the overall administration of the partner's CDBG-DR activities. They include the following:

- Personnel files;
- Property management files;
- General program files: Files relating to the subgrantee, partner's, or contractor's application to the grantee, the partner agreement, program policies and guidelines, correspondence with grantee and reports, etc.; and,
- Legal files: Articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

Financial records: These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

Project/case files: These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

Reporting

As a recipient of CDBG-DR funds, GOSR established reporting requirements for all partners and contractors in their respective partner and contractor agreements and contracts in accordance with 24 CFR 570.503(b)(2). GOSR established its own reporting requirements in accordance with the provisions as found in 24 CFR 85.40(a) and (e) and 85.41(c) and (d) for Units of General Local Government (UGLGs) or 24 CFR 84.51(a) for non-profit partners reporting requirements.

Generally speaking, GOSR monitors reporting requirements at five different program intervals:

1. At execution of agreements;
2. Monthly;
3. Quarterly;
4. Annually; and
5. As required.

Partners, contractors, subrecipients and developers submit the documents and reports to the State at the times indicated in the partner and grant agreement, loan agreement and/or contract agreement, and in the format prescribed by GOSR staff. Deviations from this requirement must be approved by GOSR staff.

Record Retention

Record retention is a requirement of the Program. Records are maintained to document compliance with Program requirements and federal, State, and local regulations and to facilitate an audit review by HUD. GOSR will retain documents for six (6) years after closeout of the grant to the State, which ensures compliance with 24 CFR 570.490(d). For Subrecipients and contractors, GOSR requires retention of all financial records, supporting documents, statistical records, and all other pertinent records (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the closeout of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or the retention period, whichever occurs later.

GOSR seeks to ensure that:

- Compliance with all requirements concerning records and records management practices under federal and State regulations;
- That the organization has the records it needs to support and enhance ongoing business and citizen service, meet accountability requirements and community expectations;
- These records are managed efficiently and can be easily accessed and used for as long as they are required; and
- These records are stored as cost-effectively as possible and when no longer required they are disposed of in a timely and efficient manner based on HUD Handbook 2225.6, Records Disposition Schedules and HUD Handbook 2228.2.

Access to Records

24 CFR 570.490 (as amended by 2 CFR 200.336) Recordkeeping requirements:

“(c) Access to records.

(1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.”

The availability of records is subject to the exemptions to public disclosure set forth in section 87(2) of the New York State Public Officers Law. All Freedom of Information Law (FOIL) requests under the Public Officers Law must be made in writing to the Records Access Officer and will be processed in accordance with the procedures set forth therein.

Audit Trail

All records defined by the organization as important are captured into GOSR’s recordkeeping systems (e.g., SharePoint, Intelligrants, Tribuo, Elation, Imarc, GSP, etc.) so they can be appropriately managed.

All applicant data is secured in GOSR’s management information system for a specified period of time in accordance with the current Record Retention and Disposition Schedule.

Recordkeeping, including scanning, uploading to GOSR’s management information system, and filing of pertinent Program documentation retention policies are to provide a physical and/or an electronic record of activities so that documentation is accessible for audit purposes.

In order to protect non-public personal information, data security measures are in place. For example, hardware and software data security protocols such as the requirement for signed non-disclosure agreements prior to receipt of access credentials for Intelligrants. GOSR also requires that hard copy files containing non-public personal information are kept in locked file cabinets to ensure their physical security.

Conflicts of Interest and Confidentiality

Conflicts of interest between subrecipients, program administrators, contractors, program staff, and other parties are strictly prohibited by federal law.

A “covered person” is an employee, agent, consultant, officer, or elected or appointed official of the State, or of a unit of general local government, or any designated public agencies, or subrecipients that are receiving CDBG-DR funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Conflicts of Interest

The Program requires all Program staff to disclose any relationship with a subrecipient or contractor. State program staff, subrecipients, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves or the contractor, for example, a Customer Representative may not perform work on the application of family. For purposes of this regulation, “family” is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in-law, sister-in-law, and children of an official covered

under the CDBG conflict of interest regulations at 24 CFR 570.489(h) (as superseded by 2 CFR 200).

GOSR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) (as superseded by 2 CFR 200) if GOSR has determined that the subrecipient has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the subrecipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii) (as superseded by 2 CFR 200). GOSR considers whether the exception provides a significant cost benefit or an essential degree of expertise; whether the opportunity was provided for under open competitive bidding or negotiation; whether the person affected is a LMI person; whether the affected person has withdrawn from his or her functions or responsibilities; whether the interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or whether undue hardship results from failure to grant the exception.

Confidentiality/Privacy

The Program is committed to protecting the privacy of all of our individual stakeholders, including the public and those individuals working on the Program.

Any personal information collected by the Program is covered by the Federal Privacy Act of 1974, the Personal Privacy Protection Act (NYS POL §95, et. seq.) and the State's Public Housing Law (see, PHL §159), among others. These laws provide for confidentiality, and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes, including:

1. NY CDBG-DR Grant Program may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.
2. Independent Auditors, when hired by the Program to perform a financial or programmatic audit of the Program, for use in determining program compliance with all applicable HUD and federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.
3. NY CDBG-DR Program may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
4. Organizations assisting the State in executing the CDBG-DR Program must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but is not limited to, HUD, FEMA, FBI, NYS Office of the Comptroller, and the Office of the Inspector General.

Recapture Policy

The New York State Housing Trust Fund Corporation (HTFC) under the Division of Homes and Community Renewal (HCR) through GOSR is responsible for ensuring that CDBG-DR funds awarded by HUD through New York Rising comply with all federal, state and local requirements.

In order to ensure that New York State is able to fulfill its contractual obligations to HUD, and that the subrecipients receiving CDBG-DR assistance are using the funds for their intended purpose, GOSR requires all subrecipients to sign subrecipient agreements stipulating each party's responsibilities and the potential penalties if the subrecipient is found not to have fulfilled their obligations. Specifically, if the funds are not used for eligible activities, the money can be recaptured.

To monitor operations and to guard against fraud or unintentional violations of program requirements, GOSR has established quality control procedures. If a program violation is identified, the State recaptures funds in accordance with its recapture procedure.

Exhibit 2 – Citizen Participation Plan

Community Development Block Grant Disaster Recovery Hurricane Irene, Tropical Storm Lee, & Superstorm Sandy

The primary goal of the New York Citizen Participation Plan is to provide all New York citizens with an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR Sandy recovery program(s). The Plan sets forth policies and procedures for citizen participation, which are designed to maximize the opportunity for citizen involvement in the community redevelopment process. New York State developed the Citizen Participation Plan to meet the requirements of the CDBG Disaster Recovery (CDBG-DR) funding for Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee. The Plan reflects the alternative requirements as specified by the U.S. Department of Housing and Urban Development (HUD) in the Federal Register (FR-5696-N-01), Federal Register (FR-5696-N-06), Federal Register (FR-5696-N-11), and notice of specific waivers.

The State will ensure that any Units of General Local Government (UGLG) or sub-recipients who receive funds will have a Citizen Participation Plan that meets the CDBG-DR regulations and takes into consideration the waivers and alternatives made available under CDBG-DR funding.

In order to facilitate citizen participation requirements and to maximize citizen interaction in the development of the New York Disaster Recovery Action Plan, substantial amendments to the Action Plan, and the Quarterly Performance Reports (QPR), the State has laid out targeted actions to encourage participation and allow equal access to information about programs by all citizens, including those of low and moderate income, persons with disabilities, the elderly population, persons receiving Disaster Housing Assistance Program (DHAP) funding, and persons with limited English proficiency.

Public Outreach

GOSR is committed to ensuring that all populations impacted by the storms are aware of the programs available to assist in the recovery from Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy. Through in person meetings, outreach events, online and traditional media, GOSR has publicized programs and conducted outreach efforts throughout the storm impacted areas. In addition, the Governor initiated the NYRCR Program, a grass-roots community driven process that engages the public as a key stakeholder in the planning and rebuilding process. Through 61 cross-jurisdictional Planning Committees representing 119 communities, the NYRCR stakeholders helped to inform their communities about the available recovery programs as they came online.

Programmatic Outreach

Through the NYRCR Program, there have been over 650 Planning Committee Meetings to construct a vision statement; to conduct an inventory of critical assets and an assessment of risks; and then ultimately to craft the strategies, and proposed projects or actions, to address these risks. All meetings were open to the public and were publicized by media advisories, flyers, and posters

hung in public buildings; radio announcements; and through social media. Where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

More than 250 Public Engagement Events attracted thousands of community members, who provided feedback on the NYRCR planning process and proposals and made additional suggestions. Planning Committees members were instrumental in representing communities that are traditionally underrepresented in disaster recovery, from engaging immigrant populations to working with high school students. Committee members made presentations at senior housing complexes, religious gatherings, schools, and at Chambers of Commerce.

For the Small Business program, GOSR worked in coordination with the Empire State Development Corporation (ESD) as well as its sub-recipient, the Small Business Development Center (SBDC) to create a multi-pronged approach to reach out to more than 3,000 businesses in the impacted communities. This included paid advertising, door-to-door visits, press releases and other public relations efforts, and collaboration with various constituents and community organizations.

Early in the NY Rising Homeowner Program, the State partnered with the Long Island Housing Partners to target community outreach including but not limited to, persons with disabilities and other special needs, and senior households, with a focus on low- and moderate- income minority communities; outreach to and coordination with civic associations, religious and advocacy groups (racial equity), social service agencies, emergency aid not-for profits, educational institutions, and outreach to residences impacted by the disaster.

The State's vendors on the project also held numerous meetings to inform the public about the availability of grants for home repairs. This outreach consisted of a variety of methods: media announcements, online updates on the Storm Recovery website and through Storm Recovery profiles on social media platforms including Facebook, Twitter, and Instagram, community meetings, and partnerships with sub-recipients. Additionally, staff frequently made presentations to community groups, specifically in Long Island, to provide updated program information. A similar effort has been conducted in counties in upstate New York to make sure that all impacted homeowners have the most up to date information about the program. In addition, frequent technical assistance meetings were held with applicants to assist homeowners in better understanding the program and completing the rebuilding process successfully.

Further the State also engaged the Welfare Council of Long Island/Long Island Long-Term Recovery Group (LTRG) to conduct targeted outreach to low- and moderate- income individuals that were affected by Superstorm Sandy, in order to encourage these individuals to apply to the NY Rising Housing Recovery Assistance Program before the April 11, 2014 deadline.

For its rental programs, the State conducted outreach to potential landlords throughout the impacted areas that may be eligible for the program. As part of its implementation, the State also conducted outreach to previous tenants of the damaged rental units to make them aware of potential repaired and newly built units as they were completed.

Outreach to Vulnerable Populations

The State also conducted outreach to residents with more acute needs, particularly low- and moderate income households and households headed by non-English speaking persons. As noted

above, within the NYRCR program, where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

As the State continues to implement programs and work with communities to recover from Hurricane Irene, Tropical Storm Lee and Superstorm Sandy, GOSR is committed to continued outreach and program accessibility to vulnerable populations and ensuring that program information is accessible to populations with language barriers. For example, the APA is translated into Spanish, Russian and Chinese, which are the three languages most needed for persons with language barriers in impacted counties (based on the 2008-2012 ACS 5-Year Estimates, Table B16001, Populations 5 Years and Over Who Speak English less than “very well”). The State continues to translate programmatic materials within its Programs. The State also continues to provide translation services as needed in case management and public meetings.

The State’s website (www.stormrecovery.ny.gov) includes language translation functionality. The State also provides translation of any document into additional languages, braille, or any other formats for persons with visual impairments upon request.

The State continues to further these efforts to reach out to all populations and ensure that the community is educated and aware of all of the recovery programs. As programs adjust and move into new phases, the State will continue to adjust their public outreach to ensure comprehensive outreach to all populations.

Public Notices, Public Hearings, and Comment Period

The State Citizen Participation Plan ensures that there is reasonable and timely access for public notice and comment on the activities proposed for the use of CDBG-DR grant funds. In the Notices for the Second and Third Allocation HUD revised the requirements for public hearings. The State always holds one public hearing, at minimum, for each substantial amendment, starting with APA6. Written minutes of the hearings and attendance rosters are kept for review by State officials. The State continues to coordinate outreach meetings with State entities, local governments, non-profits, private sector, and involved associations. The State invited public comment to the New York Disaster Recovery Action Plan and will continue to invite public comment for any future Substantial Amendments for a minimum thirty days, posted prominently and accessed on GOSR’s official website.

Substantial Amendments to the Action Plan

The State has defined Substantial Amendments to the Action Plan as those proposed changes that require the following decisions:

- Addition or deletion of any allowable activity described in the approved application;
- The allocation or re-allocation of more than \$1 million; and/or,
- Change in the planned beneficiaries.

Those amendments which meet the definition of a Substantial Amendment are subject to public notification, public hearings and public comment procedures. Citizens and units of local government are provided with reasonable notice and an opportunity to comment on proposed Substantial Amendments to the Action Plan. A notice and copy of the proposed Substantial

Amendment is posted on the agency's official website. Citizens are provided with no less than thirty days to review and comment on the proposed amendment.

A summary of all comments received and responses are included in the submission to HUD and posted to GOSR's official website. A summary of the comments and responses can be found in the relevant Action Plan Amendment on GOSR's website.

Non-substantial Amendments to the Action Plan are posted on GOSR's official website after notification is sent to HUD and the amendment becomes effective. Every Amendment to the Action Plan (substantial and non-substantial) is numbered sequentially and posted on the website.

Performance Reports

The State must submit a Quarterly Performance Report through HUD's Disaster Recovery Grant Reporting (DRGR) system no later than thirty days following the end of each calendar quarter. Within three days of submission to HUD, each QPR must be posted on GOSR's official website. The State's first QPR is due after the first full calendar quarter after the grant award. QPR's will be posted on a quarterly basis until all funds have been expended and all expenditures have been reported. Each QPR is available at: <https://stormrecovery.ny.gov/funding/quarterly-reports>.

Each QPR includes information about the uses of funds in activities identified in the Action Plan as entered in the DRGR reporting system. This includes, but is not limited to: project name, activity, location, and National Objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate- income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The State must also record the amount of funding expended for each Contractor identified in the Action Plan. Efforts made by the State to affirmatively further fair housing are included in the QPR.

During the term of the grant, the grantee provides citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the approved program and to the grantee's use of grant funds as well as contracts procured with CDBG-DR funding. This information is posted on the grantee's official website and provided on request.

Technical Assistance

The State provides technical assistance to facilitate citizen participation where requested, particularly to groups representative of persons of low- and moderate- income and vulnerable populations. The level and type of technical assistance is determined by the applicant/recipient based upon the specific need of the community's citizens.

Citizen Participation Requirements for Sub-recipients and Local Governments Participating in CDBG-DR Programs

To ensure applicant compliance with Section 508 of the Housing and Community Development Act of 1974, as amended, the citizen participation requirements for Units of General Local Government (UGLG) applying for or receiving Disaster Recovery funds from the State are as follows:

Each applicant shall provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the CDBG program. The applicant shall provide adequate information to citizens, obtain views and proposals of citizens, and provide opportunity to comment on the applicant's previous community development performance.

UGLGs that receive CDBG-DR funds must have a written and adopted Citizen Participation Plan which:

- Provides for and encourages citizen participation, with particular emphasis on participation by persons of low- and moderate- income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;
- Provides citizens with reasonable and timely access to local meetings, information, and records relating to the State's proposed method of distribution, as required by regulations of the Secretary, and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended, and the unit of local government's proposed and actual use of CDBG funds;
- Provides for technical assistance to groups representative of persons of low - and moderate-income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;
- Provides for the review of proposed activities and program performance by potential or actual beneficiaries, and with accommodations for the disabled;
- Provides for a timely written answer to written complaints and grievances, within 15 working days where practicable;
- Identifies how the needs of non-English speaking residents will be met where a significant number of non-English speaking residents can be reasonably expected to be involved;
- Establishes procedures and policies to ensure non-discrimination, based on disabilities, in programs, and activities receiving federal financial assistance as required by Section 504 of the Rehabilitation Act of 1973, as amended.

The plan must be made available to the public and must include procedures that meet the following requirements:

- *Performance Hearings:* Prior to close out of the disaster recovery program, the Program, the UGLG and State sub-recipients may be required to hold a public hearing to obtain citizen views and to respond to questions relative to the performance of the program. This hearing is held after adequate notice, at times and locations convenient to actual beneficiaries and with accommodations for the disabled and non-English speaking persons provided. Written minutes of the hearings and attendance rosters are kept for review by State officials. Nothing in these requirements shall be construed to restrict the responsibility and authority of the applicant for the development of the application.
- *Complaint Procedures:* The State ensures that each UGLG, or sub-recipient funded with CDBG-DR funds has written citizen and administrative complaint procedures. The written Citizen Participation Plan provides citizens with information relative to these procedures or, at a minimum, provides citizens with the information relative to the location and hours at which they may obtain a copy of these written procedures. All written citizen complaints which identify deficiencies relative to the UGLG, sub-recipient's community development program merit careful and prompt consideration. All good faith attempts are made to

satisfactorily resolve the complaints at the local level. Complaints are filed with the Executive Director or Chief Elected Official of the entity who is receiving the funds and who is investigating and reviewing the complaint. A written response from the Chief Elected Official, Agency Head, or Executive Director to the complainant is made within 15 working days, where practicable.